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ABSTRACT

This booklet is part of a series of units designed to encourage students to take positions on issues of religious freedom. In an introductory section, the document provides background information on the series and on the history of religious freedom in the United States, then explains how students should approach the issues raised in the text. The document goes on to explore what constitutes a religion and what is religious freedom. Students also examine the role of the First Amendment to the U.S. Constitution and the difference between religious freedom and religious tolerance. A concluding section, "Review, Reflection, and Research," explores issues in greater detail and calls for deeper exploration of the issues surrounding religious freedom. Each section presents challenging questions on religious issues and calls upon students to assume roles, take positions, and defend viewpoints. The accompanying Teacher's Guide focuses on the following organizing questions: (1) What is religion? What is religious freedom?; (2) What is the proper relationship between religion and government?; and (3) What limits should be placed upon the free exercise of one's religious beliefs? Can religious toleration be enforced? Value issues are implicit in legal and constitutional issues because the best justification for laws is that they should improve the well being of society. This teacher guide suggests one way to approach the unit on religious freedom. The guide includes instructions on preparing to teach the unit, introducing the unit, defining religion and religious freedom, and discussing the First Amendment, and religious toleration. Issues are grouped as ethical or value issues, definitional issues, and fact explanation issues. The exercises suggested include writing, research, and discussion. A bibliography and student handouts are included. One handout is on purposes and skills of discussion. The other is a list of discussion rating scales with seven categories. (SG)

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Belief, Practice, and the Public Interest

2

Public Issues Series

RELIGIOUS FREEDOM: BELIEF, PRACTICE, AND THE PUBLIC INTEREST

Adapted from the Harvard Social Studies Project
by James C. Schott
under the direction of
Donald W. Oliver and Fred M. Newmann

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What Is the Public Issues Series?

The Public Issues Series is designed to help you take and defend a position on public issues. A public issue is a question involving a choice over which there is disagreement. Public issues can be answered by all the citizens of a nation or community or by officials acting for them:

- Should school newspapers have the same right to freedom of the press as other newspapers?

Public issues can also be phrased as choices for personal action:

- Should I write a letter to the principal to protest censorship?

You might ask why this unit looks at the history of religious freedom rather than concentrating just on current religious issues. By looking at how decisions were made in the past, we can see that history did not have to happen just the way it did. History is not simply a rushing stream of political, economic, and social events. The decisions people make shape history. In addition, many of the problems people face persist across time and place. By looking at how these conflicts were resolved in other times and places, we can clarify our positions on how they ought to be resolved here and now.

What Are the Central Issues of This Unit?

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

These 16 words from the First Amendment to the U.S. Constitution put the force of law behind religious freedom and separation of government and religion. Because we in the United States today take the separation of church and state for granted, we forget that these words charted a course that is one of the boldest and most successful experiments in religious freedom ever attempted.

In colonial America and throughout 17th- and 18th-century Europe, governments commonly supported, and sometimes required, allegiance to a particular religion. Religion was seen as providing the moral foundation upon which the civil government rested. Many believed that without divine authority, social chaos would result.

Ten years after the signing of the Declaration of Independence, only two states – Rhode Island and Virginia – had full religious freedom. The other 11 states still gave preferential treatment to some church. In spite of the persistence of "established churches," there was considerable religious diversity among the population. "Minority" religions were concerned about the privileges given to the most numerous Anglicans and Puritans. So were the Americans who belonged to no church; these "unchurched" made up a majority of the population at the time the nation was founded.

The wording of the First Amendment was the result of debates and compromises. The record of the debates among the legislators who wrote and approved the Bill of Rights reveals important differences regarding the meaning of religious freedom and how best to achieve it.

In the 200 years since the Bill of Rights was written, debates about the meaning of religious freedom have continued. This controversy has become the subject of hundreds of court cases and many laws. The persistent issues with which individuals, legislatures, and the courts have struggled are:

- What is religion? What is religious freedom?
- What is the proper relationship between religion and government?
- What limits should be placed upon the free exercise of one's religious beliefs? Can religious toleration be enforced?

This unit will introduce you to specific instances in which these issues have been a point of controversy. You will face these issues as open-ended questions – questions that are still being debated today.

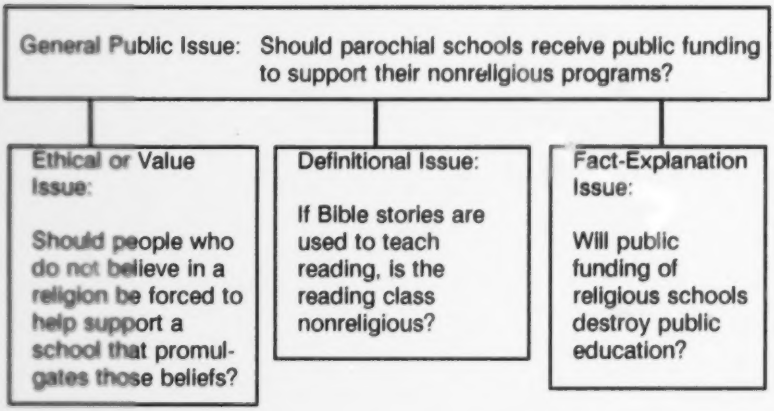
How Will We Approach the Issues in This Unit?

In this unit, you will take part in many discussions. Remember that not every discussion will resolve disagreements. It is often just as useful for people to learn to state their ideas with more precision and clarity and to discover precisely how their ideas differ from those of others.

Learning to identify the kinds of questions being raised can help keep discussion moving. In discussing public issues, people generally look at three kinds of questions:

- Ethical or value questions. These questions deal with judgments about what should or ought to be done – judgments about rightness and wrongness.
- Questions of definition. These questions revolve around the meaning of important words or phrases, like *religion* or *religious freedom*.
- Questions involving facts and explanations. These questions focus on disagreements about the descriptions or explanations of events.

Examples of each kind of question are given in the diagram below:


General Public Issue: Should parochial schools receive public funding to support their nonreligious programs?
Ethical or Value Issue:
Should people who do not believe in a religion be forced to help support a school that promulgates those beliefs?
Definitional Issue:
If Bible stories are used to teach reading, is the reading class nonreligious?
Fact-Explanation Issue:
Will public funding of religious schools destroy public education?

You may be starting to see that dealing with public issues involves thinking on several levels at the same time:

- Thinking about the controversial topic at hand.
- Thinking about the process of clarifying the topic by identifying the kinds of questions being raised and using strategies for dealing with them.
- Thinking about the feelings and relationships we develop toward others in the conversation and how we can deal constructively with these feelings.

Remember that the reason for discussing a public issue is not to "win" the argument but to understand more clearly your own views and the reasons that support them, as well as differing opinions.

Trouble at Camp Lone Pine

The religion clauses in the First Amendment are based upon the idea that religious beliefs are different from strongly held secular beliefs. Among the criteria often used to define religion are belief in the existence of a divine force, sincere faith and conviction, a set of rituals or ceremonies, and institutions that teach and govern the way the faith is practiced. As you read the selection that follows, try to determine how religion is being defined. Are there important differences between religious beliefs and other strongly held values?

* * * * *

Camp Lone Pine, in the wilderness of northern Maine, seemed an ideal place for a boy to spend his summer. Each year about 175 young men, ranging in age from 12 to 18, came to camp for eight weeks of vigorous outdoor life. The camp, with a staff of 30 experienced counselors, provided excellent training in woodcraft and sports. The boys also had opportunities to pursue interests in arts, crafts, and music.

"Camp Lone Pine," said the brochure, "provides a unique experience for boys of all faiths and backgrounds. Together they confront the beauty and challenges of nature."

Most of the campers' parents thought the $3000 summer fee was a bargain.

The Camp was advertised as "nonsectarian." Boys of all religions were invited. In practice, however, 90 percent of the campers and staff belonged to Christian faiths of one form or another. Several camp activities encouraged the development of moral and spiritual values. Before each meal the boys recited in unison a short prayer of grace. Every Sunday they attended a nondenominational religious service. The service was held in the outdoor "Forest Cathedral" nestled in a heavily wooded hillside overlooking Crystal Lake. The campers also conducted "honors nights" when outstanding campers received awards for achievement and leadership. The chaplain presided over these honors nights, bringing solemnity and dignity to the affairs.

This story is fictional, but it authentically represents continuing issues.

Then trouble began. Six older boys in Shawnee Cabin got hold of a startling little book – *The Creed of Self-Respect* by Arthur Nungasser. Its contents first puzzled, then intrigued them. According to the book:

> Man is made in the image of God. To gain the best sense of God, man must **know himself** – and protect his own interests. Self-knowledge and self-interest link man and God.

"Doesn't 'self-interest' clash with the traditional idea of charity?" asked one boy.

"Sure," said another, "but get this...."

> Self-interest has been made to seem **evil.** Such terms as "charity," "the common good," and "community spirit" are in fact deceptions. Their sole purpose is to weaken man. Man is being duped into following a dubious idea called "general welfare."

The boys argued. Finally they decided that charity and kindness had to have some limits. They agreed that it was practically sinful for a person to sacrifice his or her own valuable goals in a futile effort to help others. They accepted Nungasser's central idea – "I'll help you, not because it's good or right, but because it will help *me*, and further *my* interests."

The Shawnees were not long in spreading this idea around. They assembled small groups of fellow campers. They urged everybody to think deeply about it.

The reaction, however, was strictly ho-hum. Most of the campers laughed off the Shawnees as a bunch of oddballs.

This nettled the Shawnees. But somehow it united them, too. They held more meetings. They drew up an oath of loyalty. At last their activities attracted the attention of the camp chaplain.

"I must say your ideas are un-Christian, perhaps even anti-Christian," he said.

The Shawnees were incensed. They replied that they belonged to a worthwhile religious group. They said that the other campers were slaves to dull tradition.

The chaplain found, to his dismay, that his opposition pulled the new group more tightly together than ever.

At last the Shawnees refused to say grace or bow their heads at meals. They even refused to stop talking while the rest of the dining hall prayed. Counselors had to ask the Shawnees to leave during grace—and the commotion upset the whole camp.

Finally the Shawnees appeared at Sunday worship, handing out printed cards that read:

> Join the ranks of a new religion—Mutual Individualism. We pray to God and to the Individual Self, the main expression of God's will. In life's struggle, your fate depends on your own strength, not on the soft-hearted ideals of "charity."

The camp staff members were astounded. They held a special conference on the Shawnees. They decided to meet with the young zealots.

The Shawnees replied that they had nothing to discuss.

From here on, the rebels moved into high gear, avidly preaching Mutual Individualism.

In the end, the Shawnee philosophy had an impact on a number of susceptible campers. One was George Androck.

George had attended Sunday School from the age of eight. The ideas of Mutual Individualism impressed, yet disturbed him. Worried that he would shock his parents with this new-found "religion" when he returned home, he visited the chaplain. The chaplain, duly upset, referred him to a local clergyman of George's own church. The clergyman listened, then said gravely that George should not remain in the presence of the Shawnees.

The next day George was jittery and irritable. A counselor sent him to the doctor. During the examination, George broke down and told the physician about his mental wrestling match.

Within a week, the camp director recommended that George return home for the remaining four weeks of the summer. He faxed a letter to George's parents, explaining the circumstances.

But George's parents were not to be put off so easily. They sent a strongly worded letter insisting that the Shawnees be sent home. Had not *they* – instead of George – caused the trouble in the first place?

Many campers began to lose patience with the Shawnees. But the Shawnees persisted, dragging others into arguments and trying to demonstrate the "phoniness" of love and charity, the superiority of Mutual Individualism. Several campers (of different sects) got up a petition urging that the Shawnees be sent home because they "incited unnecessary disturbances which infringed on the religious privacy of the majority."

The camp director then wrote to the parents of all the Shawnees, enclosing a refund and informing them that their boys would be sent home two weeks early. He explained that they had caused a serious disturbance. Some of the Shawnee parents refused the refund. They claimed that they would be inconvenienced by having to cut short their vacations to meet their sons at home. Several other parents of Shawnees protested that their sons had a right "to think freely." Nevertheless, a majority of the campers voted to expel the Shawnees from Camp Lone Pine.

At this point, the parents of some of the Shawnees threatened to take the whole matter to court. The pleasant summer appeared destined for an unhappy ending.

Persisting Questions of History

Defining Religion. Was Mutual Individualism a religion? Write a definition of *religion*. In your definition be sure to specify traits that distinguish religion from other sets of beliefs. What are the important traits of Mutual Individualism? Compare these traits with the elements of your definition.

Was Camp Lone Pine a secular or religious camp? Refer to your definition of *religion* to answer the question.

Defending a Position. Imagine that you are a member of the Mutual Individualists. You have been charged with "causing a serious disturbance" at the camp and are going to be sent home. Write a short statement in which you defend your actions and beliefs as well as your right to remain at the camp.

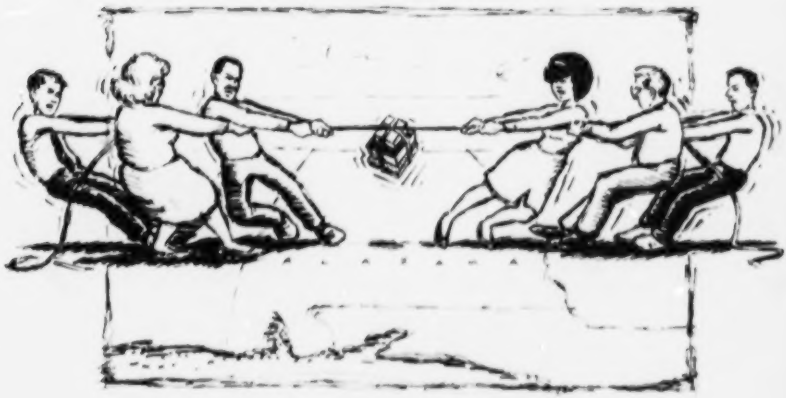
Is Secular Humanism a Religion?

An ongoing issue that reflects the difficulty of defining the term religion is the question of whether secular humanism is a religion. The case described below, which, like many others, involved the schools, provoked debate on this issue.

* * * * *

Teacher Douglas T. Smith and some 600 parents and teachers claimed that 44 books being used in history, social studies, and home economics classes in Mobile, Alabama, should be removed from the schools. Why? Because, they said, the textbooks reflected the religion of secular humanism; thus, using them in schools violated the establishment clause of the First Amendment. The central question in this case became: Is secular humanism a religion?

The humanist position has been espoused by a variety of people over time. While the tenets of the Humanist Association do not represent the beliefs of all who consider themselves humanists, they do provide an overview of the position. The 1973 Humanist Manifesto rejects "traditional dogmatic or authoritarian religions that place revelation, God, ritual, or



creed above human needs." It supports extending "the use of scientific method...to fuse reason with compassion in order to build constructive social and moral values." The manifesto says that the existence of a supernatural being is "either meaningless or irrelevant to the question of the survival and fulfillment of the human race."

The Manifesto calls for the following:

- Situational ethics derived from human experience.
- Solving human problems through reason and intelligence infused by a sense of human caring.
- Respect for the "preciousness and dignity of the individual person."
- The right to birth control, abortion, divorce, and the freedom of sexual behavior between consenting adults.
- The right to die with dignity.
- Participatory democracy in the economy, school, and family.
- Separation of church and state.
- Increased economic well being for all, including a guaranteed minimum annual income.
- Elimination of all discrimination based on race, religion, sex, age, or national origin.
- The development of a "system of world law and a world order based on transnational federal government."
- Disarmament and rejection of war as a way of solving international conflicts.
- International cooperation in conserving natural resources, protecting human rights, providing assistance of various kinds, and promoting culture, science, and the arts.
- Use of technology to benefit humans.

The legal door that allowed secular humanism to be defined as a religion was opened in a footnote to the 1961 case of *Torcaso v. Watkins*. In that footnote, Justice Hugo Black attempted to clarify the definition of religion by saying that a religion did not depend upon belief in a supreme being; he listed as examples of religions that did not include belief in a supreme being "Buddhism, Taoism, Ethical Culture, Secular Humanism, and others."

Subsequent cases attempted to clarify further the definition of religion. In a case involving conscientious objectors, the Court held that belief in a supreme being was not required to be protected under the law. The court said that a "religious belief" was to be interpreted as any belief that "held the same place in the life of the objectors as an orthodox belief in God holds in the life of one who was clearly qualified for exemption."

The Alabama textbook case was first tried in the U.S. District Court in Alabama, Judge Brevard Hand presiding. A witness in the case argued that secular humanism was not a religion, it was instead "...a scientific method of unfettered opportunity to investigate any domain of human interest without preconceptions of a religious nature. It expresses an ethical point of view and seeks to develop moral awareness and to cultivate moral sensitivity in individuals. It does not have an element of the spiritual nor of the transcendent or otherworldly elements....It does not denounce rival creeds, does not advance a universal truth, nor does it have a concept of salvation. And, lastly...does not call for submission to a greater authority."

Judge Hand rejected that argument:

> Secular humanism is religious, for First Amendment purposes, because it makes statement based upon faith assumptions....To say that science is only concerned with data collected by the five senses as enhanced by technological devices of man's creation is to define science's limits. These are the parameters with which scientists function. However, to claim that there is nothing real beyond observable data is to make an assumption based not on science, but on faith, faith that observable data is all that is real. A statement that there is no transcendent or supernatural reality is a *religious* statement....To demand that there be physical proof of the supernatural and to claim that an apparent lack of proof means the supernatural cannot be accepted is to create a religious creed....The Court is holding that the promotion and advancement of a religious system occurs when one faith-theory is taught to the exclusion of others and this is prohibited by the First Amendment religion clauses....For purposes of the First Amendment, secular humanism is a religious belief system, entitled to the protection of and subject to the prohibitions of the religious clauses. It is not a mere scientific methodol-

ogy that may be promoted and advanced in the public schools.

The judge concluded that because the challenged textbooks taught the precepts of the religion of secular humanism, they violated the establishment clause of the First Amendment; further use of the books in question was to be prohibited.

The case did not end in Judge Hand's Court. It was appealed to the U.S. Courts of Appeals where, although the decision was reversed, the definition of religion issue was avoided. The Court sidestepped the issue by saying, "The Supreme Court has never established a comprehensive test for determining the 'delicate question' of what constitutes a religious belief for purposes of the First Amendment, and we need not attempt to do so in the case, for we find that, even assuming that secular humanism is a religion for purposes of the establishment clause, Appellees have failed to prove a violation of the establishment clause through the use in the Alabama public schools of the textbooks at issue in this case."

The plaintiffs appealed to the Supreme Court, which turned down their application. Thus, the issue of whether secular humanism is or is not a religion for purposes of the First Amendment will remain unanswered until another case is brought before the Supreme Court.

Persisting Questions of History

Analyzing Consequences. Imagine that Justice Hand's definition of religion had been tested by the Supreme Court and found to be valid. What would be the consequences for your school? Would any of your classes have to be revised? Why or why not?

An American "Public Religion." The Declaration of Independence and U.S. Constitution make statements about some basic issues of what it means to be human. Some people have called the values set forth in these documents our American public religion. Do you agree with this statement? Do you think schools have the right to indoctrinate students in the "correctness" of our form of constitutional government? Should groups whose belief systems conflict with the so-called "American public religion" have the right to disobey laws that conflict with their beliefs? As an example, consider Native Americans, whose beliefs about property and contract rights are different from those guaranteed by the U.S. Constitution.

Defining Religion. Use what you have read to write a definition of *religion*. According to your definition, are religious beliefs different from or the same as other strongly held secular beliefs? Why is this important or unimportant? According to your definition, is humanism a religion?

In your opinion, who should decide what qualifies as a religious belief – the courts, the legislature, the person who professes a certain belief? Explain how who makes the decision could have an effect on society as a whole and on religious groups in particular.

The Bible Commonwealth

With some definition of religion in mind, we turn now to the meaning of religious freedom and its history in the United States. Prior to and during the colonial era, every country of Europe had its "established" church, one church that was given a privileged position and government support. Most of the British colonies in America followed this familiar pattern.

The early years of the Massachusetts Bay Colony demonstrated the firmness – and the frustrations – of a government built on "a covenant with God." As you read about the founding of the colony, think about how you might have reacted as a member of the Puritan Church and as a nonmember.

* * * * *

The European Context

In 1620 the Pilgrims established the Plymouth Colony on the west shore of Cape Cod Bay in what is now Massachusetts. Nearly ten years later, the Puritans arrived to found the Massachusetts Bay Colony to the north of Plymouth. The arrival of these two vastly different religious groups reflected the European religious controversies from which they emerged.

The Pilgrims brought with them views on church-state relations that were influenced, in part, by their stay in religiously tolerant Holland and, in part, by their leader John Robinson. Robinson did not believe that forcing people to join a particular religion was good for the group or the individual.

Robinson saw religious toleration as a matter of self-preservation rather than an article of faith: "Protestants living in the countries of papists commonly plead for toleration of religions; so do papists that live where protestants bear sway: though few of either, especially of the clergy...would the other tolerate where the world goes on their side."

The Puritans brought with them the legacy of John Calvin. Calvin was a French lawyer strongly affected by the Reformation movement initiated by Martin Luther. He, like Luther, believed that God grants salvation to the faithful alone. Since God chose who was to be saved, individuals were never sure of their status. However, upright moral con-

duct was seen as a sign of God's favor. Fighting, swearing, laughing in church, playing cards, dancing, and attending the theater were all prohibited.

In England, the Puritans were in conflict with the Church of England, or Anglican Church. When Henry VIII broke with the Roman Catholic Church in 1534 he did so on practical, rather than religious, grounds: because the Pope refused to annul Henry's marriage to Catherine (to enable him to marry Anne Boleyn), Henry had the English Parliament declare him the head of the Church of England. In fact, he sought to maintain virtually all the characteristics of Catholicism, including its many rituals, except the Pope. In England, the Anglican Church had become a tool of the civil government—to give it authority and to further its ends.

The Puritans, on the other hand, believed government should be the tool of religion. They had stayed in England hoping to "purify," or simplify, the Anglican Church. However, King Charles I, who came to the throne in 1625, threatened to crush Puritan ideas. Thus, the Puritans looked to North America as a haven where they could put their beliefs into practice. When they embarked upon their journey to North America, their express purpose was to establish a community "under a due form of government both civil and ecclesiastical."

Question for Conversation

1. Do you agree with John Robinson that religious toleration can be defended better as a method of self-preservation than as an important moral principle? Why or why not?

* * * * *

John Winthrop Founds the Massachusetts Bay Colony

John Winthrop arrived in New England in 1630 ready to establish a Bible Commonwealth, a kingdom of God on earth. The new society was supposed to exist by the authority of God's agreement with the Puritans. People in the society had the responsibility of choosing leaders who would execute God's will and preserve the religious covenant.

About 400 hungry, hollow-eyed men and women, many already weak from malnutrition, stumbled ashore with Winthrop at Salem in the Massachusetts Bay Colony. They saw little to renew their strength. The summer heat was hotter than any they had known in England. The old

planters who had spent the previous winter there could tell them that the winters were colder too. Many of the earlier settlers were living in wigwams they had made like those of the Indians. They were as weak as the newcomers they greeted. About 80 of their fellows had died the preceding winter.

John Winthrop immediately searched a large area surrounding the tiny Salem community. Soon he located a site for permanent settlement at the head of a cove on a small peninsula. Here began the town of Boston and the Bible Commonwealth.

The settlement had originated as a commercial venture. English businessmen saw the New World as a great opportunity for accumulating wealth in minerals, furs, fish, and lumber. A small amount of money invested in the first settlements held the chance of tremendous profits. But wealthy English Puritans like Winthrop had seen more than wealth offered in the shares of the Massachusetts Bay Company.

To operate legally in England, corporations like the Massachusetts Bay Company had to be chartered by the King. The royal charter granted in 1629 gave the organizers of the company authority to:

> ...make, ordeine, and establishe all maner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, not contrary to the laws of this realm of England....and for naming and stiling of all sorts of officers both superior and inferior....

There was an important omission. Most other English corporations were expected to hold regular meetings in London or other English cities. But the location of meetings was not specified in the charter of the Massachusetts Bay Company. Thus, a dozen influential Puritans, controlling shareholders of the company, quietly agreed to emigrate to North America and to hold all meetings there, taking with them the privileges of ownership and government.

The Puritan owners thus escaped from the religious persecution that had been growing for almost a century in England. Many faiths had had their martyrs. Roman Catholics had suffered after 1534, when Henry VIII broke with Rome and established the Anglican Church as the state religion of England. in 1553 Mary I, one of Henry's daughters, came to the throne and attempted to reinstate Catholicism as the religion of England. In the first year of Mary's reign, Anglican Bishop John Hooper

was burned at the stake with bags of gunpowder tied to his body. He had refused to forsake his beliefs.

Catholics felt the lash of persecution again after the death of Mary and the succession of Queen Elizabeth in 1558. Laws not only fined Catholics for hearing Mass on Sunday but punished them for not attending Anglican services. Those who broke the law twice could be put to death as traitors.

Puritans felt the bitterness of Protestant against Protestant. They won their name by trying to "purify" the Church of England. They raised loud objections to the elaborate ceremonies they believed detracted from more essential matters, such as the Bible or individual prayer. They pleaded for less glorification of church officials, who often seemed to act as if *they* were to be worshiped instead of God.

Puritans believed that man was forever condemned to damnation because of his original sin in the Garden of Eden. He had broken his covenant with God, thus dooming himself to a life of wickedness and evil. But *all* men were not automatically destined for the devil; some would be saved, for God was merciful. Some men would be chosen or "elected" by God as worthy of grace and salvation. It was up to these—the faithful" to preserve the church and to establish God's will on earth.

The Puritans believed that only the "faithful" should belong to the church, and church members should have the right to expel the non-faithful—the profane and wretched, the atheists, adulterers, thieves, murderers, and liars. Churches would be formed by the faithful, jointly agreeing to establish their community of worship, electing their minister and establishing their own procedures.

On these terms Winthrop and his assistants immediately began to organize a government. All members of the company (that is, all stockholders) were called *freemen*. The freemen assembled in the "Great and General Court" and elected a governor (John Winthrop), deputy governor, and 18 assistants. The elected officials were called "magistrates," charged with carrying out the day-to-day administration of the colony. The General Court was to meet four times a year, the magistrates once a month. Winthrop and his assistants issued a variety of orders dealing with such matters as the burning of land to clear it for crops, the fixing of bounties on wolves, and the handling of straying cattle and swine.

They also ordered people to live by the laws of God as written in the Bible. For example, when a Mr. Clearke (a boarder) had been looking

John Winthrop served as governor of Massachusetts Bay Colony for 12 terms. He died in 1649.

"too longingly" at Mrs. Freeman, Clearke was forbidden to live any longer in the Freeman household. Nicholas Knopp was fined five pounds for selling at a high price a false cure for scurvy.

The freemen were not a large group. A great number of the settlers had been hired to make the voyage because their skills—as carpenters, surgeons, blacksmiths, sailors—were needed. Most of them were not freemen.

Of the several hundred inhabitants in the early settlement, probably fewer than 20 held stock in the company. Only these stockholders were allowed to vote and participate in the General Court elections. After the first year in the New World, Winthrop extended rights of freemanship and voting to all members of the church, regardless of whether they held stock in the company. Annual elections were established in which the freemen chose "assistants," and the assistants would choose the governor and deputy governor.

By 1634 a group consisting of two "deputies" from each town in the colony began to advise the magistrates on matters of taxation and legislation. When the deputies asked to participate equally with the magistrates in the making of laws, Winthrop argued strongly against it. He reminded the citizens that few men were adequately qualified to carry out God's will and that the function of leadership in the commonwealth was not to serve the people, but to serve God.

Questions for Conversation

1. Describe the relationship between government and religion in Massachusetts Bay Colony.

2. How did Puritans justify limiting the number of people making decisions in their government? If you had been a colonist who was not a member of the church, how would you have felt about this limit? Explain your answer.

* * * * *

Dissent Arises

Within a few years the population of the colony expanded, and more new communities grew outside of the original Boston settlement. By 1640, about 20,000 persons had emigrated from England and about 18 Puritan churches had been established within the property of the Massachusetts Bay Company. To become a member in the Puritan church, one had to behave in certain ways and demonstrate belief in certain ideas. Candidates for church membership had to be examined by the minister and other church members. They questioned the candidate on his knowledge and understanding of the Bible. They reviewed his life history, looking for evidence that he had not only behaved according to God's commandments, but that he had also gone through some special kind of "conversion" experience that gave evidence of unshakable faith and commitment to God's covenant.

Most historians agree that the church members were in a minority. Yet the nonvoting majority had to promise obedience. Even those who had not been accepted for church membership had to take an oath, which began:

> I do hereby swear and call God to witness, that being now an inhabitant within this jurisdiction of Massachusetts, I do acknowledge myself lawfully subject to the authority and government there established, and do accordingly submit my person, family and estate, to be protected, ordered and governed by the laws and constitutions thereof and do faithfully promise to be from time to time obedient and conformable thereunto, and to the authority of ye Governor and all other magistrates there and their successors and to all such laws, orders, sentences, and decrees, as now are

> or hereafter shall be lawfully made, decreed and published by them....

Nonmembers who refused to take this oath were banished from the colony.

Winthrop and his associates had brought with them on the voyage hundreds of men, women, and children who could not live up to the strict standards of Puritanism. Without some education it would be impossible to pass the test of biblical knowledge, and without strong self-discipline, it would be difficult to conform to the kinds of behavior that the Puritans demanded. Furthermore, many inhabitants saw little reason to join the church. A person spending most of his life solving the problems of survival might have had little energy left for vigorous religious activities, and the demands of Puritanism were heavy indeed.

Charged with religious zeal, lawmakers passed specific regulations designed to keep the settlement holy. On the Sabbath all inhabitants, whether church members or not, were required to attend church. Persons were seriously admonished or fined for playing, "uncivil walking," drinking, and traveling from town to town. Some towns set up special committees to observe the conduct of their neighborhood. If a member of such a committee noticed any of his neighbors neglecting private worship, using profane language, idling, or violating Sabbath laws, he was required by law to report it to the nearest magistrate.

Dissent against the churches and ministers seemed to flourish in spite of stern laws. One of the regular lists of punishments, for example, read this way:

> Katherine Finch for speaking against the magistrates, against the churches and against the elders, was censured to be shipped and committed....
>
> Mr. Ambrose Martin, for calling the church covenant a stinking carryon and saying...that ministers did dethrone Christ and set up themselves, was fined 10 pounds and counselled to go to Mr. Mather to be instructed by him.
>
> Two Indian women were adjudged to be shipped for their insolent carriage and abusing Mr. Weld, one of the ministers.

In 1646 a Dr. Robert Child and six other men submitted a petition to the General Court of Massachusetts. Part of the petition read:

> There are thousands in these plantations of the English nature, freeborn, quiet, peaceable men, righteous in their dealings who are debarred from all civil employment, not being permitted to bear the least office, no, not so much as to have any vote in choosing magistrates, captains or other civil or military officers....
>
> ...We therefore desire that civil liberty and freedom be forthwith granted to all truly English, equal to the rest of their countrymen...

Outraged Massachusetts authorities and ministers denounced Child's petition. The General Court refused to accept the petition, hauled Child and his companions into court, and fined Child 50 pounds, the others 30 or 40 pounds. Child then secretly drafted another petition, one that he intended to deliver personally to Parliament in protest of the Massachusetts government's alleged violation of the rights of Englishmen. As Child prepared to sail for England, he was arrested and prevented from sailing. His baggage was searched and the petition confiscated.

It is estimated that by the end of the 17th century more than 80 percent of the population had no privileges of voting or of holding office. The group of ministers and church members believed that the government did not exist primarily to serve the people, but only to carry out God's will.

Questions for Conversation

1. Based upon what you have read, how might the Puritans have justified banishing someone who refused to take the "oath"?

2. Residents of Massachusetts Bay were required to follow laws based on the Puritan religion, even if they were not members of the religion. Young people today are required to follow laws they had no voice in passing. How are the two situations similar or different? Which group do you think is most likely to follow the laws willingly – the colonists or today's young people? Explain your answer.

3. What are the risks, both for residents of Massachusetts Bay and for citizens and students today, of "rocking the boat," regardless of the reasonableness of the cause. For example, what if you thought the

school's assistant principal was harrassing students by talking to them abusively or threatening to take legitimate rights away? You know that the principal and assistant principal are friends, so there is no point in talking to her immediate supervisor. Would there be any risk in going to the superintendent of schools or president of the school board with a petition against the assistant principal? Imagine some possible ways such an action would be resolved.

Persisting Questions of History

Testing Analogies. Remember that the Bible Commonwealth began as a corporation, a private and voluntary business organization. In this light, consider the modern situations listed below, indicating which you think are acceptable and which you think should not be allowed:

- A private country club excludes non-Christians.
- A private religious college refuses to admit students dating people of other races; interracial dating and marriage are against the religion's beliefs.
- A labor union schedules important business meetings at a time when some members cannot attend because of religious obligations.
- A religious group expels its own members for such practices as divorce and remarriage, drinking, smoking, or profanity.
- A distributor of kosher foods hires only Jews as salespeople, on the grounds that members of other faiths do not work effectively with his customers.
- A nursing home financed by a religious group discourages admission of patients who belong to other faiths.

The Purpose of Government. Some differences in views about religious freedom may be based on differing views about the purpose of government. What did the founders of the Bible Commonwealth see as the purpose of government? What, according to the Preamble to the Constitution, is the purpose of the U.S. government? Do you think everyone agrees with this purpose?

From How to Start Your Citizens for Excellence in Education Committee, by Robert L. Simonds.

Read the following excerpt written in 1984 by a group called Citizens for Excellence in Education. How are their views similar to the views of the founders of the Bible Commonwealth? How are they different? What might this group think about religious freedom?

> Government and true Christianity are inseparable! The Word of God says "blessed is the nation whose God is the Lord; and the people He hath chosen for His own inheritance" (Ps. 33:12). Christians are a "*separate* people," with a different set of morals and belief from the world. But we are to live *among* the world and always be shedding light (truth) upon society.
>
> Proverbs tell us, "With good men (the righteous) in authority, the people rejoice; but with the wicked in power they groan" (Pr. 29:2 L.B.). God's instructions are clear – those who know the living God and possess eternal truth (Bible) must be in authority (run for office) if a nation is to be happy.
>
> *Freedom* cannot exist without God's people in authority, because only truth and spiritual men had God's direction. God clearly tells us this when He says: "Now the Lord is the Spirit, and where the spirit of the Lord is, there is *freedom*." *Only* where the spirit of the Lord is – his people, Christians must get involved.

Views on The Meaning of Religious Freedom

In 1647, the Massachusetts General Court passed decrees saying "No Jesuit or spiritual or ecclesiastical person ordained by the pope or see of Rome shall henceforth come into Massachusetts. Any person not freeing himself of suspicion shall be jailed, then banished. If taken a second time he shall be put to death." At the same time, however, a move toward religious freedom was also underway, based on the growing conception in both Europe and the colonies that all Protestant religions shared a common world view and that there was a need to provide latitude for people to follow their own conscience. The Reformation belief that the salvation of the individual was primarily between that individual and God planted the seed for toleration.

In England, the Acts of Toleration provided freedom to Protestant religions but not to Catholics. Indeed, it was not until 1829 that Catholics were granted official tolerance; not until 1858 were Jews permitted to sit in Parliament. In North America, each colony dealt with religion and religious toleration differently, granting varying degrees of freedom to different groups.

All the excerpts and documents that follow express a commitment to religious freedom, but each approaches it from a different point of view. As you read them, note who is given freedom and who is not. Note also the degree to which the government is allowed to intervene in religious affairs. How do the documents' authors justify their positions?

* * * * *

Maine's Declaration of Religious Tolerance, 1649

> That all goode people within the jurisdiction of this province who are out of a Church way and be orthodox in judgement and not scandalous in life, shall have full liberty to gather themselves into a Church estate, provided they do it in a Christian way: with the due observance of the rules of Christ revealed in his worde: and every Church hath free liberty of election and ordination of all her officers from tyme to tyme provided they be able, pious and orthodox.

Maryland Act Concerning Religion, 1649

> Whereas the enforcing of the conscience in matters of religion hath frequently fallen out to be of dangerous consequence in those commonwealths where it hath been practiced, and the more quiet and peaceable government of this province, and the better to preserve mutual love and unity amongst the inhabitants here, Be it therefore ordained and enacted...that no person or persons whatsoever within this province...professing to believe in Jesus Christ, shall from henceforth be any wales troubled, molested, or discountenanced in his or her religion, nor in the free exercise thereof...nor in any way compelled to belief or exercise of any other religion against his or her consent.

Roger Williams' "Ship Letter," 1655

Roger Williams was banished from the Massachusetts Bay Colony in October 1635 because, among other things, he opposed the use of civil authority to coerce people into adherence to religious rules. To avoid being deported to England, Williams fled into the wilderness south of Massachusetts. He eventually obtained a charter from the English Parliament to form the colony of Rhode Island.

Williams' reasons for opposing the Massachusetts laws are clarified in the "Ship Letter," in which he uses a ship as the metaphor for government.

* * * * *

> There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination or society. It hath fallen out sometimes, that both papists and protestants, Jews and Turks, may be embarked in one ship; upon which supposal I affirm, that all the liberty of conscience, that ever I pleaded for, turns upon these two hinges – that none of the papists, protestants, Jews, or Turks, be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any. I further add, that I never denied, that notwithstanding this liberty, the commander of this

> ship ought to command the ship's course, yea, and also command that justice, peace and sobriety, be kept and practiced, both among the seamen and all the passengers. If any of the seamen refuse to perform their services, or passengers to pay their freight; if any refuse to help, in person or purse, towards the common charges or defence; if any refuse to obey the common laws and orders of the ship, concerning their common peace of preservation; if any shall mutiny and rise up against their commanders and officers, because all are equal in Christ, therefore no masters nor officers, no laws nor orders, nor corrections nor punishments; – I say, I never denied, but in such cases, whatever is pretended, the commander or commanders may judge, resist, compel and punish such transgressors, according to their deserts and merits.

Questions for Conversation

1. In what ways does each of the documents you have just read support or undermine religious freedom?

2. How do the statements differ from one another?

3. Which of the three documents would have protected the religious liberty of a non-Christian, such as a Buddhist? Point to specific language in the text to defend your answer.

4. What reason does the Maryland Act give for supporting religious freedom? Why do you suppose the authors of the Maryland Act, like those of the Maine Act, maintained restrictions on religious freedom?

* * * * *

The Virginia Bill of Rights, 1776 and 1786

The Virginia Bill of Rights, written in 1776, stated:

> All men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that is mutual duty of all to practice Christian forbearance, love, and charity towards each other.

Thomas Jefferson objected to this wording and in 1786 proposed the following version, which was passed and remains a part of the Virginia Constitution today:

> Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being Lord both of body and mind, yet chose not to propogate it by coercions on either, as was in his almighty power to do....
>
> Be it enacted by the General Assembly,
>
> That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and the same shall in no wise diminish, enlarge, or affect their civil capacities.
>
> And though we well know that this assembly, elected by the people for the ordinary purpose of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and that therefore do declare this act to be irrevocable would be of no effect in law; yet are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.

Questions for Conversation

1. How did Jefferson's 1786 wording differ from the 1776 version of the Virginia Bill of Rights? What do you think were the reasons for the differences?

2. Would any religious belief be prohibited by the 1786 law?

3. Does the law distinguish between religious beliefs and religious practices? Why might this be important?

Persisting Questions of History

Defining Religious Freedom. Based on what you have read so far and on your own views, define *religious freedom*. In a society with religious freedom, what is the relationship between government and religion?

Testing Your Definition. Read the letter that follows. As you read, decide whether the school district should grant the requests made by Sha'ban M. Ismail. What reasons might be given for denying some requests? Would denying the requests infringe on the religious freedom of Muslim students? Explain your answer.

محمد رسول الله

الإتحاد الإسلامي لأمريكا الشمالية

THE ISLAMIC SOCIETY OF NORTH AMERICA

Needs and Requirements of Muslim Students in Public Schools

Dear Sir/Madam:

I would like to bring to your attention some of the most serious problems faced by Muslim students in public schools. We seek your urgent cooperation in solving these problems in order to guarantee religious freedom and non-discrimination.

A. Please be advised that according to the teaching of Islam as enunciated in the Quran, the revealed Book of Allah (God), and the traditions of Prophet Muhammad (Peace be upon him), all Muslim men and women must abide by the following dress code in public:

   (1) Men must cover all parts of their body at least from navel to the knee.

   (2) Women must cover all parts of their body except their face and hands.

   (3) Both sexes are asked not to wear tight clothing.

   (4) Both sexes must cover private parts of their body even in front of their own sex.

Used by permission of the Sha'ban M. Ismail, Islamic Society of North America.

Islam also does not permit unnecessary mixing together for the two sexes.

On behalf of ISNA, the largest organization of Muslims in the United States and Canada, I would like to request that in view of the above teachings of Islam, Muslim students in your school system should not be required to:

(1) sit next to the opposite sex in the classroom,

(2) participate in physical education, swimming or dancing classes. Alternate meaningful educational activities should be arranged for them. We urge you to organize physical education and swimming classes separately for boys and girls in accordance with the following guidelines:

a) Separate classes should be held by boys and girls in a fully covered area (no glass doors or windows without curtains).

b) Only male/female instructors for the respective group.

c) Special swimming suits which will cover all the private parts of the body down to the knee.

d) Separate and covered shower facilities for each student.

(3) participate in plays, proms, social parties, picnics, dating, etc. which require free mixing of the two sexes.

(4) participate in any event or activity related to Christmas, Easter, Halloween, or Valentine. All such occasions have religious and social connotations contrary to Islamic faith and teachings.

B. We also urge you to ensure that the following facilities are available to Muslim students in your school:

(1) They are excused from their classes to attend off-campus special prayers on Fridays (approximately 1 to 2:00 p.m.).

(2) They are excused for 15 minutes in the afternoon to offer a special prayer in a designated area on the Campus. This prayer is mandatory for all Muslims and often cannot be offered after the school hours.

(3) All food items containing meat of a pig (pork, ham, bacon, etc) in any form and shape (including animal shortening, monoglyceride or any other related ingredient) as well as alcohol should be clearly labeled in the cafeteria. Food prepared by vegetable shortening with non-alcohol and pork-free ingredients should be available for a Muslim student.

(4) At least one properly covered toilet should be available in each men's and women's room. The availability of a water pipe in that toilet will also be highly desirable.

(5) Muslim students are excused (without penalty of absence) for the two most important festivals of Islam:

Eid Al-Fitr and Eid Al-Adha in accordance with the lunar calendar.

I hope your school system will do its utmost to honor and respect the religious requirements of your Muslim students in order to facilitate their educational process. I will be happy to answer any inquiries from you regarding this matter.

Sincerely,

Sha'ban M. Ismail, Ph.D.
Head of Department of Education

Assessing Your Discussion Skills. At the beginning of this unit, your class was introduced to some skills that help make discussions productive. Think about your own participation in discussions. For each skill below, give yourself a rating from 1 (poor) to 5 (excellent):

- Setting an agenda for discussion.
- Summarizing progress.
- Making clear transitions to new issues.
- Stipulating a temporary resolution to factual claims.
- Being open to new ideas, willing to change positions.
- Listening actively to others.

The First Amendment: What Does It Mean?

The First Amendment to the U.S. Constitution says:

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

Although the First Amendment is very brief, the clauses addressing religion and government have been a persistent source of conflict in American society. When disagreements about the First Amendment result in court cases, the contenders often refer to historic documents, resorting to speculation regarding the original intention of the amendment's authors. Complicating the debate is the fact that the two clauses related to religion and government have separate intentions and occasionally conflict with one another.

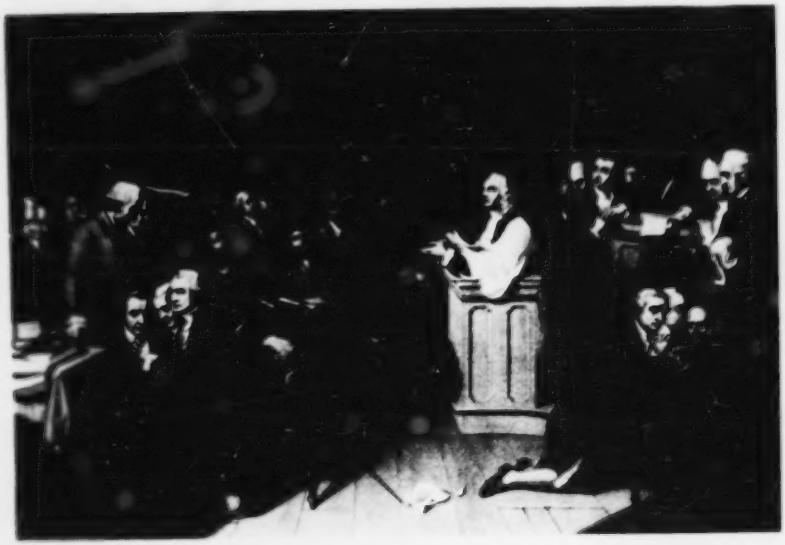
* * * * *

Establishment Clause

The portion of the amendment that reads, "Congress shall make no law respecting an establishment of religion...," is known as the establishment clause. At the time Congress wrote the Bill of Rights, some states had "established" religions; that is, a particular religion enjoyed financial support and authorization from the state government.

The religious and political climate into which the First Amendment was introduced included pressure from some political leaders to "disestablish" state-supported churches. For example, as early as 1779, James Madison and others had proposed a law that would have prohibited Virginia, which supported the Episcopal Church, from giving tax money to the church. Patrick Henry proposed language that would have required state governments to provide support to all religions equally. Others suggested "that the reformed protestant religion including the different denominations thereof...be established." The unsuccessful 1779 Virginia bill said that the "Christian Religion shall...be the established Religion of this Commonwealth."

However much controversy there may have been about the proper relationship between individual states and religion, there is no doubt that



The first prayer in Congress.

the framers intended to prohibit the newly formed federal government from designating and enforcing a national religion. It is not so clear whether they also intended, as some have suggested, that there be an absolute prohibition on government doing something to support religion. The two views are aptly represented by the following quotes:

In 1947, Justice Wiley Rutledge wrote:

> ...we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.

Justice William O. Douglas wrote in 1952:

> We are a religious people whose institutions presuppose a Supreme Being...When the state encourages religious instruction or cooperates with religious authorities...it follows the best of our traditions.

One way to determine the intentions of the authors is to analyze what individual words mean. For example, the meaning of the word

respecting is critical to understanding the establishment clause. On the one hand, *respecting* can be understood to mean *tend to*; that is, Congress is prohibited from passing laws that tend to establish a state-supported religion. On the other hand, the debates over the amendment indicate that *respecting* might also have meant *with respect to previously established religions*; that is, the government can make no laws affecting previously established state religions. If this was the case, it was likely intended as a compromise to satisfy those states, such as Massachusetts, that wanted to prohibit the national government from interfering with their established religions. This interpretation would support those who suggest that the amendment was never intended to prohibit religious activities, such as prayer in school.

The Supreme Court has, however, developed a broader definition of the establishment clause. In 1947, a New Jersey taxpayer challenged the right of a local school board to pay the transportation costs of students to parochial schools. The Supreme Court upheld the practice. But the Court's opinion added some important observations:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion....In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."

Free Exercise Clause

The free exercise clause is that portion of the First Amendment that says Congress shall make no law "...prohibiting the free exercise thereof [religion]." This phrase is intended to protect an individual's right to follow his/her own conscience. In interpreting the clause, courts ask how much nonconformity must be tolerated in the name of religious liberty.

In 1868, polygamy was illegal, but was practiced by members of the Mormon Church. The Supreme Court denied the Mormon Church's claim that polygamy should be allowed because it was an obligation of their religion. The Court said that the public interest took precedence over religious freedom; thus, Mormons could not practice polygamy. The decision read in part:

> Laws are made for the government of actions and while they cannot interfere with mere religious beliefs and opinions, they may with practices...Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.

In 1972, however, the Supreme Court upheld Amish parents' decision to break compulsory school attendance laws, a decision you will be reading more about in the next section. The courts have had the task of finding a neutral middle ground regarding religion, on the one hand protecting the individual's right to choose and practice religious beliefs while on the other hand keeping government out of the business of promoting religion. It has not been an easy job.

Questions for Conversation

1. Do you know of any evidence to indicate that "we are a religious people whose institutions presuppose a Supreme Being," as Justice Douglas wrote? Try to find out what percentage of Americans attend religious services. How does this compare to other countries with similar cultural backgrounds?

2. Why might Justice Rutledge have said that complete separation was good for both religion and government? Would you agree with Rutledge's statement?

3. Why is the meaning of the word *respecting* so important in understanding the establishment clause? What definition did the Supreme Court seem to accept in the 1947 New Jersey decision?

4. A citizens group is proposing that the words "In God We Trust" be removed from U.S. money. Which position would you take?

    - Join the group. Such wording violates the establishment clause.
    - Oppose the group. As a country, we believe in God. It is alright for the government to support this belief as long as it doesn't force a particular religion on anyone.

After you have selected your answer, discuss your point of view with someone who disagrees with you. Try to understand his/her view so completely you could argue for that position in a discussion.

The Case of the Amish Teenagers

Much of the controversy surrounding the free exercise clause of the First Amendment has related to the distinction between religious belief and religious practice. While few have questioned the right of people to believe what they wish, there has been considerable question about the extent to which religious practices should be regulated. While prohibiting the creation of religious artwork or forbidding people from bowing at an altar would clearly violate the free exercise clause, the issue is less clear when exercising one's religion involves actions that are otherwise illegal, such as using drugs or withholding needed medical care from children.

Does religious freedom include the right to be let alone—even from laws enacted for the public welfare? That was the question in the 1972 case of three Wisconsin teenagers, whose parents held them out of public high school.

* * * * *

Frieda Yoder, Barbara Miller, and Vernon Yutzy were teenagers who lived in Green County, Wisconsin. They had recently graduated from the eighth grade. Frieda, Barbara, and Vernon lived a way of life quite different from that of most American teenagers, a way that hadn't changed much in 250 years. They were members of a small tightly knit religious minority known as the Amish.

At the heart of Amish belief is a biblical command: "Be not conformed to the world." To the Amish, this means that one should not dress and behave like the worldly (in effect, the rest of society), who are considered to be dominated by a Satanic Kingdom. Thus, Amish doctrine forbids intimate contact with persons outside the community.

The Amish have established a strict code for church members to follow in their personal lives. The "Plain People," as they are called, wear somber, modest clothing. Women wear ankle-length dresses and full bonnets. They may not wear bright clothing or high heels, or wave their hair. Similarly, the men wear dark clothing, broad-brimmed black hats, and beards.

The Amish shun almost all modern conveniences. They drive horse-drawn buggies. In their homes the Amish live successfully without large mirrors, pictures, overstuffed furniture, electrical appliances.

The traditional occupation of the Amish is farming, which they consider the purest means of earning a livelihood. Amish children are brought up and educated to become farmers. They are immersed in Amish religion from their earliest days. Because the Amish do not seek outside converts, they must pass down their religion and culture to their children if their way of life is to survive.

The Amish consider public education, with its worldly environment, not only evil but also a threat to their existence. This reasoning impels the Amish to forbid formal education beyond the eighth grade. That is how Frieda, Barbara, and Vernon became the center of a case called *State of Wisconsin v. Jonas Yoder et al.*

The families of the three teenagers refused to send them to public high school. Wisconsin's compulsory education law requires that students attend school until they reach age 16—Frieda and Barbara were 15, while Vernon was only 14. The parents were charged with violating the compulsory education law and fined $5 each, the minimum penalty.

The parents were willing to offer a compromise, based on a model that the Amish in Pennsylvania had used. They would set up their own vocational training center. Here, students would be taught one day a week, studying English, social studies, math, and health under the guidance of an Amish teacher. The rest of the week, they would be

taught about farming and household management by their parents. Wisconsin turned down this offer, saying the education Amish students received would not be equivalent to that received in public schools.

The case eventually went all the way to the U.S. Supreme Court. The lawyers for the Amish argued that the First Amendment guaranteed the free exercise of the Amish beliefs; that free exercise required that students not attend public secondary school, where they would be exposed to intellectual and scientific accomplishments in conflict with the Amish way of life. Furthermore, they would be exposed to a social life that might tempt them away from the simple farm life.

Experts testified that the conflict between "worldly values" and the ways of the Amish might do psychological harm to the children. Other experts said that the Amish form of home education was very effective. Wrote Donald A. Erickson, a college teacher and member of a committee supporting the Amish legal battle:

> In terms of the Amish culture, the Plain People's approach to education may be one of the most effective yet devised. Their success in training the young to be farmers has impressed many agricultural experts....Amish prosperity and self-sufficiency are legendary. These are not the characteristics of a preparation for adulthood that has failed.

The state of Wisconsin argued that the public schools are dedicated to teaching students of varying religions, creeds, and races to live together. In addition, the state said that Amish students who decided to leave their church would be poorly prepared for life in secular society. The Amish parents, said the state, were interfering with their children's welfare. The state therefore had to act to protect the children.

The Court upheld the right of the Amish to keep their children out of public high school. Writing for the Court, Chief Justice Burger confirmed that the Amish religion and way of life were inseparable. He cited the success of Amish farmers and the law-abiding nature of the Amish community as evidence that Amish education was effective preparation for adulthood. The opinion concluded with this summary:

> Nothing we hold is intended to undermine the general applicability of the State's compulsory school-attendance statutes or to limit the power of the State to promulgate reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural vocation-

al education under parental and church guidance by the Old Order Amish or others similarly situated. The States have had a long history of amicable and effective relationships with church-sponsored schools, and there is no basis for assuming that, in this related context, reasonable standards cannot be established concerning the content of the continuing vocational education of Amish children under parental guidance, provided always that state regulations are not inconsistent with what we have said in this opinion.

Persisting Questions of History

Defining "Public" and "Private." Which of the following Amish beliefs and practices would you consider strictly private matters that should not be subject to any government action? Which involve a public interest that could justify government action?

- All insurance is evil. Social security is a form of insurance and is thus evil.
- Tractors and automobiles may not be used.
- Men should wear full beards.
- An Amish youth who does not observe the customs of the community may be banished.
- War is not an acceptable means of settling disputes.

Do you consider the Mormon Church's 19th-century practice of polygamy a private or public matter? Should this practice have been treated the same as the Amish practice of removing children from public school? Why or why not?

Parents, Children, and the State. Suppose in each of the following situations that the commands of parents, based on religion, go against the wishes of a child. Do you think the state should intervene in these cases? Why or why not?

- A Christian Scientist denies medical aid to his child.
- A parent of one faith prohibits her child from associating with children of other faiths.

- A Seventh Day Adventist prohibits her child from going to Christmas parties and exchanging gifts with other children.
- A parent prevents his child from visiting services with a friend of a different faith.
- Parents refuse to allow their child to receive birth control devices provided at a school clinic.
- A Jehovah's Witness refuses to allow her child to register for the draft.
- Atheists refuse to allow their child to say the Pledge of Allegiance.
- A mother forbids her child to dance at school social affairs.

Evaluating an Analogy. The Native American Church claims over 250,000 members nationwide. Peyote, a drug derived from the cactus plant, is considered a sacramental material that embodies the Great Spirit. The federal government and 23 states have passed laws that exempt the religious use of peyote from criminal prosecution. In Oregon, however, use of peyote is a criminal offense regardless of the reasons for its use.

Alfred Smith and Galen Black are members of the Native American Church. The two men were fired from their jobs because they ingested peyote in a religious ceremony. When Smith and Black filed for unemployment benefits, they were turned down, again because of their use of peyote. The men sued, saying that the state of Oregon violated their right to exercise their religious beliefs.

In 1990, the U.S. Supreme Court upheld the Oregon law, in effect saying that a person may not use the First Amendment to justify an activity that is declared generally unlawful. The justices argued that the Court had never held that an individual's religious beliefs excuse him or her from compliance with otherwise valid laws prohibiting conduct that the government is free to regulate. A dissenting opinion pointed out that previous decisions had required the government to show a "compelling interest" in regulating religious practices. No such compelling interest had been shown in this case, according to the dissenting opinion.

How is this case similar to and different from the Yoder case? What was the intent of the Wisconsin state law? How important is the public's interest in public education? in prevention of drug abuse? Do you agree with the Court's decision in one or both of the cases? Why or why not?

The Case of Jesse Cantwell

Does religious freedom include the right to criticize other faiths? The U.S. Supreme Court faced that question in the 1940 case of Jesse Cantwell.

* * * * *

Jesse Cantwell trudged heavily down the street, his figure lopsided from the drag of a bulky black suitcase. It contained books, pamphlets, a portable phonograph, and a set of records. Cantwell wore a neat business suit and a felt hat. He was a Jehovah's Witness.

Cantwell walked on Cassius Street in New Haven, Connecticut. The block was heavily populated and full of life. That was good for a man with calls to make.

Cantwell had spent most of the day going from door to door. First he would ask each person for permission to play a record, which introduced and described a book. If permission was granted, he played the record and asked the person to buy the book. If permission was refused, Cantwell asked a contribution toward the publication of pamphlets. For each contribution, he gave a pamphlet—on condition that it be read.

His day, he thought, had not been very successful. Some homeowners had taken quick offense at his presentation. There had been more than the usual number of slammed doors. Yet Cantwell felt some consolation. He knew why the day had been difficult. More than 90 percent of the people of Cassius Street were Catholic.

Even in the best of circumstances, Cantwell knew, the work of a Jehovah's Witness was not easy. Every Witness who preached the truth of the Bible as faithfully as he should, Cantwell thought, could expect resistance.

He knew this resistance might take the form of ridicule, threats, and even violence. From time to time Witnesses had been beaten or chased through the streets.

What was more, Cantwell knew, was that Witnesses often encountered a wall of restrictive local laws. These laws might forbid uninvited calls at homes, or levy high taxes, or require licenses that were often impossible to obtain.

Opposition arises partly in response to basic beliefs of the Jehovah's Witnesses. Witnesses believe that Satan has ruled the world since 1914. They believe that the world has gotten progressively worse since then and is rapidly moving toward Armageddon. In this great battle, Jehovah (from the Hebrew name for God) is expected to destroy Satan and all other evil. Thereafter, Witnesses say, God will rule a world free of pain, sorrow, and even death.

At their periodic conventions, Witnesses wear badges proclaiming, "God's Kingdom Rules—Is the World's End Near?" Yet, according to Witnesses, only 144,000 persons will go to heaven, there to rule with God as kings for a thousand years.

Witnesses base all their beliefs solely on the Bible. They cite references to both the Old and New Testaments, but their interpretations differ greatly from those of other faiths. For example, Witnesses do not believe in the general immortality of the soul, but say that the soul—except for those of people who will go to Heaven—dies with the body. Witnesses deny the general belief that Jesus died on the cross; they say He was tortured to death at the stake.

Another Witness belief forbids blood transfusions as violating a biblical injunction against "eating blood." Time after time Witnesses have refused to consent to blood transfusions for themselves or for their

children, even when the refusal appeared to mean certain death. The courts have generally respected the right of adult Witnesses to refuse, but judges have often ruled that no parent has a right to consign a child to death by refusing blood out of religious conviction.

Because all Witnesses regard themselves as ministers, opposed to taking part in war, they frequently seek to be exempted from military service. Draft disputes have landed hundreds of them in federal prisons. In most other respects, Witnesses have won the right to be considered ministers in the eyes of the law.

Jesse Cantwell was disturbed about some of the incidents of the day. But then, he reflected, God had commanded Jehovah's Witnesses to teach others.

The thought made Cantwell feel somewhat better about the most unfortunate incident of the day. It had occurred when Cantwell stopped two men in the street to ask their permission to play a record for them. Somewhat bemusedly the men had given their permission. The record described a book entitled *Enemies* and contained a general attack on all organized religious systems as instruments of Satan and harmful to men. The record singled out the Roman Catholic Church as the most evil.

As the record played, the two men, both Catholics, had looked at one another in astonishment. Then anger had welled up in them, pumping their faces red. Cantwell had been sure that they were going to hit him. But instead one of the men had told him angrily, "You better get off the street before something happens to you." Without hesitation and without a word, Cantwell had picked up his things and left.

Cantwell made a point of never forcing the issue. Throughout the day, he had tried to conduct himself in a quiet, orderly manner. If anything, he thought, he had been more courteous than usual in view of the determined Catholicism he had found on Cassius Street.

Nonetheless, the day had not been without its rewards. Cantwell thought he had obtained a few leads – names and addresses of persons showing some interest in Jehovah's Witnesses. Next week he would call on these people again, this time inviting them to a free Bible lecture.

Cantwell arrived at the spot where he was to meet his father and his brother Russell. They were working on the opposite ends of Cassius Street. Cantwell glanced at his watch and saw that he was early. Rather than stand there, he might as well make one last call, he said to himself.

Cantwell was looking about for a likely looking house when a policeman approached him.

"Are you Jesse Cantwell, a member of an organization called the Jehovah's Witnesses?"

"Yes, I am Jesse Cantwell."

"I think you better come with me."

"May I ask the charge?"

"Inciting a breach of the peace and soliciting funds without a permit."

Jesse Cantwell, his father, and his brother were all arrested. Each was convicted in the New Haven Court of Common Pleas of inciting a breach of the peace and soliciting funds without a permit.

The state law read in part: "No person shall solicit money, services, subscriptions, or any valuable thing for any alleged religious, charitable, or philanthropic cause...unless such cause shall have been approved by the Secretary of the Public Welfare Council."

The State Supreme Court upheld the convictions of all three on the charge of breaking this state law. The court reversed the convictions of Cantwell's father and brother on the breach of the peace charge and ordered new trials for them. But the court upheld Jesse Cantwell's conviction on that charge specifically because of his contact with the two men for whom he had played the record in the street.

The Cantwells then appealed to the U.S. Supreme Court, which agreed to hear the case. In a unanimous opinion, the Court reversed the convictions of the Cantwells.

The Court held that the state law deprived the Cantwells of their liberty. The Court ruled unanimously that "Freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law."

The Court held that requiring the Cantwells to obtain a certificate as a condition of soliciting support for their religious views was "censorship of religion as a means of determining its right to survive," and a "denial of liberty protected by the First Amendment...."

The Court noted that on the day of his arrest Jesse Cantwell "was upon a public street, where he had a right to be, and where he had a right peacefully to impart his views to others. There is no showing that his deportment was noisy, truculent, overbearing, or offensive....It is not claimed that he intended to insult or affront the hearers....It is plain that he wished only to interest them in his propaganda."

In conclusion, the Court said:

> In the realm of religious faith...sharp differences arise....The tenets of one man may seem the rankest error to his neighbor. To persuade others to his point of view, the pleader...at times, resorts to exaggeration, to vilification....But the people of this nation have ordained in the light of history that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of citizens of a democracy.

Persisting Questions of History

Testing an Analogy. In a 1990 case, the Supreme Court upheld a state's right to levy sales or use taxes on sale of religious materials, such as Bibles, printed sermons, and religious music. The Court said that such taxes do not prevent people from exercising their religious beliefs. Since the tax was levied equally on all religious groups, it was constitutional.

How is this case different from Jesse Cantwell's case? Do you agree with the Court's decision in this case? Explain your answer.

Distinguishing Rights. People sometimes complain that their privacy is invaded by salesmen who bombard them by means of TV, radio, "junk" mail, doorbell-ringing, phone calls, and other ways. Should religious groups be limited in their use of such means to persuade others? Why or why not? Would you agree or disagree with the idea that religious groups should be given reduced rates or special privileges in the use of the following facilities?

- TV and radio
- Mail
- Telephone
- Public meeting places such as school auditoriums and town halls
- Door-to-door solicitation.

Explain your opinions.

The Case of William Murray

Can public school prayer exercises really be "voluntary"? A ninth-grader turned that question into a national issue.

* * * * *

William Murray, III, came home one day in September 1960 from Baltimore's Woodbourne Junior High School. He was upset. As young teenagers sometimes do, he nagged his mother.

The incident might have been taken as a matter of course in most American homes, ending in a short spat or a few soothing words. But in the Murray household, the 14-year-old's complaint stirred up a constitutional issue that had remained cloudy for more than a century.

Bill protested to his mother that prayers were being recited in his ninth-grade class. He said, his mother later recalled, "that he was an atheist and could not participate in school prayers. If I made him do it or allowed him to do it, I was a hypocrite."

Mrs. Madalyn Murray was not a person to let such taunts go by. She was a social worker with college degrees in sociology and law and a past worker in various civil rights causes. Her general ideas were "against authority," and she extended these ideas to her two sons, Bill and his younger brother Garth.

Atheism was not one of her causes. She had until 1960 described herself as simply "unconcerned" about religion. Her son's needling changed that, and she took the step that would ultimately cause her to be billed on magazine covers as "the most hated woman in America."

Mrs. Murray petitioned the Baltimore Board of Education to have her son excused from the classroom during the daily five-minute Bible reading and recitation of the Lord's Prayer.

The board's answer came through Dr. George B. Brain, the superintendent of Baltimore schools. He said that the Bible reading and prayer were required by a 1905 rule of the board, which had never been challenged. He said Bill could remain silent, but could not be excused.

On October 12, 1960, Mrs. Murray informed the board that her son would stay out of school in pro-test. She accepted legal help in her action from the American Civil Liberties Union.

Bill returned to school on October 28 after the board agreed to refer the case to Maryland Attorney General C. Ferdinand Sybert. On November 2 the Attorney Gen-eral ruled that objecting pupils could be excused from the classroom during Bible and prayer exercises.

That might have ended it but for the public response to the wide publicity about the case. Bill became the target for kicks and punches by fellow pupils as soon as he got back to school. Stones were thrown through the windows of the Murray home, and paint was smeared on it. The windows of Mrs. Murray's car were broken and the tires slashed. Harrassing telephone calls and violent letters began to flow in upon her.

"I decided," said Mrs. Murray, "that the whole country was sick, and one relatively sane person had to make a stand."

Mrs. Murray sued for the end of school prayer exercises in Baltimore.

Help came for Mrs. Murray's cause from Leonard J. Kerpelman, a lawyer who agreed to serve without guarantee of fees. Mr. Kerpelman himself described the case as "nutty." On the other hand, he was an Orthodox Jew and he had felt some personal discomfort over the religious exercises when he was a student in Baltimore schools.

The court dismissed the case on April 28, finding it "abundantly clear" that Mrs. Murray's "real objective is to drive every concept of religion out of the public school system."

Mrs. Murray took her case at once to the highest state tribunal, the Maryland Court of Appeals.

Arguments went on for months before the Court of Appeals. Finally, on April 6, 1962, the court decided 4-3 against her appeal. The majority opinion said the "neither the First nor the Fourteenth Amendment was intended to stifle all rapport between religion and the Government."

Five weeks later, Mrs. Murray filed her petition with the U.S. Supreme Court. Within 24 hours she was dismissed from her job as a Baltimore social worker. The vandalism of the Murray home, the vicious telephone calls, and the vitriolic letters reached a new pitch. The letters

did little to soften the crusty tone of Mrs. Murray's conversation. Her temper rose more to suit her self-imposed nickname: "Mad" Murray.

But Mrs. Murray had at least one thing to even her temper on June 25, a month after she filed her petition. Several New York taxpayers had brought a suit called *Engel v. Vitale* to the Supreme Court. They objected to a prayer recommended by the New York State Board of Regents and required as part of opening exercises in one district's schools. The short prayer went this way:

> Almighty God, we acknowledge our dependence upon Thee, and we beg thy blessings upon us, our parents, our teachers, and our country.

Defenders of the prayer called it "nondenominational." Some of the opponents of the prayer called it a "to-whom-it-may-concern" prayer. The Court voided the prayer requirement as a violation of the First Amendment. The 6-1 majority opinion granted that the prayer was "relatively insignificant," but repeated the old warning of James Madison that "it is proper to take alarm at the first experiment on our liberties."

The decision made Mrs. Murray's chances of success look far better. Still her case led to crackling debate when it came to the Supreme Court for lawyers' arguments on February 27, 1963.

"If we strike this prayer down," Justice Potter Stewart suggested to Mrs. Murray's lawyer, "we are interfering with the majority's right to free exercise of their religion....Why not just walk out? You are not required to participate."

But William Murray had been excused, Mr. Kerpelman replied, and had been "spat upon, insulted, actually assaulted" by some of his classmates as a result.

Justice Hugo L. Black broke in to question Justice Stewart's point: "The free exercise clause," he said, "does not give a right to pray in a public setting with governmental support and funds."

Francis B. Burch, Baltimore city attorney, made a rather unusual argument. He claimed that, though the Bible reading and prayer had religious origins, they were in fact required because of their "sobering influence" on students. The exercises established an atmosphere of good discipline and morality, he told the Court.

"You could just give them tranquilizer pills if that's the purpose," snapped Justice Potter Stewart.

Attorney General Thomas J. Finan of Maryland argued that the majority of the people in any area should be free to use their prayers in schools. Questioned by the Justices, he agreed that this could include Mormon prayers in Utah or Buddhist prayers in Hawaii.

"Then," commented Justice William O. Douglas, "the big contest would be to see which church could get control of the school board."

On June 17, 1963, the Supreme Court ruled in Mrs. Murray's case, together with the case called *Abington School District v. Schempp*, in

which a Pennsylvania couple challenged their state's law requiring Bible reading exercises to start the school day. The Court held, 8 to 1, that both the Pennsylvania and Baltimore laws violated the establishment clause of the First Amendment.

The majority opinion repeated the Court's recognition in an earlier case that "We are a religious people whose institutions presuppose a Supreme Being."

The Court added its support of Bible reading and comparative religions courses "when presented objectively as part of a secular program of education." The Court found, however, that:

> ...the states are requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison. These exercises are prescribed as part of the curricular activities of students who are required by law to attend school....We agree...as to the religious character of the exercises. Given that finding, the exercises and the law requiring them are in violation of the establishment clause....Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request....

Persisting Questions of History

Evaluating Policy. In what ways did the Murray case involve both the establishment and free exercise clauses? Which clause provided the foundation for the Supreme Court's decision? On what grounds do you agree or disagree with the decision in the Murray case?

Many state legislatures open each session with a prayer. The courts have ruled that this practice is permissible. How is prayer in state legislatures different from prayer in schools? Do you think the distinctions are significant enough to justify different rulings?

Applying Policy to New Cases. Suppose that you are a Justice of the Supreme Court. How would you answer the complaint in each case, and why?

- A taxpayer's complaint against the holding of a Christmas pageant in a public school.

- A taxpayer's complaint against the placing of Christmas trees in public school classrooms.
- A demand by parents of non-Christian students (Jewish, Buddhist, Moslem) that their children be excused from public schools for their own religious holidays.
- A parent's objections to an interdenominational baccalaureate service to be conducted in the school for the graduating public high school class.
- A teacher objects to an anti-drug speech given at a middle school assembly. The speaker, a former pro athlete, says he escaped addiction by "finding the Lord."
- A parent protests a school district policy calling for a minute of silent meditation at the beginning of the school day.
- A teacher protests display of the Ten Commandments in the classroom. The school district has required posting of the Commandments as one of the documents underlying our legal system.
- Parents object to a teacher's silently reading the Bible during times when students are engaged in work at their desks.
- Parents ask a school principal to forbid students to dress in Halloween costumes, which they believe promote witchcraft and devil worship.
- A parent objects to a U.S. history unit that focuses on the importance of Southern black churches in the civil rights movement.

The "Balanced Treatment Act": Academic Freedom or Religious Indoctrination?

While many establishment of religion cases have dealt with prayer in the schools or public funding of parochial schools, attention has also been given to the curriculum—what students are taught. If the curriculum teaches information that refutes the beliefs of a religion, what can parents do? The reading below describes one family's response and the national controversy that resulted.

* * * * *

"We had had an experience with our son in junior high science class. They were discussing the subject of origins. Our son was asked how the world was formed, and he said it was created. The teacher seemed quite disturbed that one of her students would make such a statement. She began to ask if he had read his textbook assignment. He said 'yes, ma'am...The textbook said we came from monkeys, but I don't believe it. I believe we were created.' She began to ridicule him in front of his peers."

These are the words of Bill Keith, who decided to take steps to change what was taught in school. Keith was eventually elected to the Louisiana Senate, where he introduced a bill named the "Balanced Treatment for Creation-Science Act." The "Balanced Treatment Act" proposed to insure "academic freedom by requiring the teaching of the theory of creation *ex nihilo* (from nothing) in all public schools where the theory of evolution is taught." The bill was overwhelmingly passed in both houses of the legislature and was signed into law by the governor in 1982. The State Department of Education refused to put the new law into effect until court challenges were settled.

The "Balanced Treatment Act" defined scientific-creationism as the "belief that the origin of the elements, the galaxy, the solar system, of life, of all the species of plants and animals, the origin of man, and the origin of all things and their processes and relationships were created ex nihilo and fixed by God." The law required the state to provide school districts with curriculum guides and research services for teaching creationism. Such research services were to be provided by a special panel, limited by law to "creation scientists." Under provisions of the bill, local school boards were prohibited from discriminating against anyone who "chooses to be a creation scientist."

Louisiana's "Balanced Treatment Act" was but one of many episodes in the conflict over what should be taught in the schools. The most famous case dealing with these issues was known as the Scopes "Monkey Trial." Like many other Southern states, Tennessee in 1925 had a law forbidding the teaching of evolution. John Scopes, a science teacher, was accused of teaching evolution and hence breaking the law. Scopes was found guilty. It was not until 1968 that the courts declared laws prohibiting schools from teaching evolution unconstitutional.

After the 1968 decision, those who wanted religious beliefs taught in schools turned to "equal time" laws, which required that the explanation of life's origins found in the Book of Genesis be given equal instructional time with the teaching of evolution. "Equal time" laws were quickly struck down by the courts as unconstitutional.

The "Balanced Treatment Act" attempted to bring the same religious teaching into the schools by declaring that the Biblical explanation of creation is scientific. Without being informed of this explanation for the origin of life, creationists claimed, students are led to believe that science (evolution) has proven their religious beliefs to be false. Furthermore, these proponents argue, teaching only evolution violates the establishment clause. Belief in evolution is a central tenet of secular humanism. Thus, by censoring creation science and instructing students in evolution, public school teachers are advancing the religion of secular humanism.

In Louisiana, some parents, teachers, and religious leaders disagreed with this line of reasoning. They joined with the Louisiana Board of Elementary and Secondary Education and the Orleans Parish School Board to ask the courts to strike down the act on the basis that it violated the establishment clause of the First Amendment.

The U.S. District Court held that the "Balanced Treatment Act" violated the establishment clause by either prohibiting the teaching of evolution or requiring the teaching of creation science with the purpose of advancing a particular religious doctrine. The decision was appealed to the U. S. Court of Appeals, which upheld the decision.

The case was then appealed to the Supreme Court, which upheld the earlier decision on a 7-2 vote. Justice William Brennan wrote the majority opinion, basing his arguments on the three-pronged test established in the 1971 case of *Lemon v. Kurtzman*. This test said that a legislative act complies with the establishment clause of the First Amendment if it meets the following criteria:

1. It must have a non-religious or secular purpose.

2. Its primary effect must neither advance nor inhibit religion.

3. It must not result in an excessive entanglement of government with religion.

In the "Balanced Treatment Act," the legislature proclaimed that its intent was to promote academic freedom. Judge Brennan rejected this claim, saying "The Act does not grant teachers any flexibility that they did not already possess to supplant the present science curriculum with the presentation of theories, besides evolution, about the origin of life....No law prohibited Louisiana public school teachers from teaching any scientific theory." He then examined the purpose of the Act:

> The pre-eminent purpose of the Louisiana legislature was clearly to advance the religious viewpoint that a super-natural being created humankind....the purpose of the Creationism Act was to restructure the science curriculum to conform with a particular religious viewpoint. Out of the many possible science subjects taught in the public schools, the legislature chose to affect the teaching of the one scientific theory that historically has been opposed by certain religious sects.

Brennan found that creation science "embodies the religious belief that a supernatural creator was responsible for the creation of humankind" and therefore "advances a religious doctrine" and "seeks to employ the symbolic and financial support of the government to achieve a religious purpose."

Associate Justice Antonin Scalia and Chief Justice William Rehnquist did not agree. In the dissenting opinion, Scalia wrote:

> In sum, even if one concedes, for the sake of argument, that a majority of the Louisiana legislature voted for the Balanced Treatment Act partly in order to foster (rather than merely eliminate discrimination against) Christian fundamentalist beliefs, our cases establish that that alone would not suffice to invalidate the Act, so long as there was a genuine secular purpose as well. We have, moreover, no adequate basis for disbelieving the secular purpose set forth in the Act itself, or for concluding that it is a sham enacted to conceal the legislators' violation of

their oaths of office. I am astonished by the Court's unprecedented readiness to reach such a conclusion...

Persisting Questions of History

Taking a Position. Reread the excerpts from the majority and dissenting opinions in the case of the "Balanced Treatment Act." On what questions did Justices Brennan and Scalia disagree? Decide which justice you agree with and write an "opinion" defending that position.

Conflicts Among Rights. Imagine that you are the parent of a student taking biology. You believe strongly in the Biblical description of creation. As your child studies evolution, she is beginning to question the teachings of your religion. You believe that the way in which biology is taught is violating the free exercise of your religion. What options do you have? How would you go about trying to protect your free exercise of religion?

Developing Policy. Suppose that you are a member of a local board of education in a fairly large city. The board is considering issues raised by a unit on religion that Ms. A., a social studies teacher, has developed. Ms. A. explains that she has tried to present a "broad and positive view" of religion by inviting representatives from nine religious denominations and an atheist group to express their views before the class. She has asked each representative to speak "with feeling" about his or her own religion, but not to debate or criticize the views of other religions. She has also encouraged class members to go together, on a voluntary basis, to the weekend services of the religious groups represented. Finally, she has prepared a guide to help other teachers teach about the influence of religion on U.S. and world history.

Three parents have come to the board meeting. Mr. X. protests, claiming that the unit should be removed. Ms. Y. supports the classroom program, but says that the field trips to religious services should not be permitted. Mr. Z. supports the entire program, which he calls "one of the most useful and imaginative ever devised in our school."

Which of these three positions do you most agree with? Why?

The Presidential Candidacy of Alfred E. Smith

U.S. citizens often take pride in the country's heritage of religious toleration. Despite this heritage, however, no non-Protestant was elected president until 1960, when John F. Kennedy, a Catholic, won the office.

The U.S. Constitution forbids any religious tests as qualification for the office of President. But no law or constitutional guarantee can prevent individuals from applying religious tests in the voting booth. Throughout U.S. history, manifestations of intolerance have been directed against Catholics and other religious minorities by the Know-Nothings, the American Protective Association, the Ku Klux Klan, and others.

Many people challenged Kennedy's fitness to be president because of his Catholicism, but the intensity of religious intolerance during the Kennedy campaign was mild compared to that faced by New York Governor Alfred E. Smith, the Democratic candidate for president in 1928. The 1928 campaign tested the depth and meaning of religious toleration in this country.

* * * * *

The campaign against Smith ranged from seemingly honest concerns regarding the potential conflict between Smith's Catholicism and his reponsibility to uphold the Constitution to vicious accusations and lies about him and the Catholic Church. Many of those who opposed Smith on political grounds used fears of "Roman Catholicism" to political advantage.

Several of the public issues of the day made Smith's religion particularly vulnerable. Prohibition was in force and strongly supported by many churches, but not the Catholic Church. The Catholic Church opposed divorce. Finally, government aid to parochial schools, many supported by the Catholics, was an issue.

Smith made no secret of the fact that his religion was important to him. A picture of the Pope hung in his office. At a reception welcoming visiting dignitaries of the church to New York City, Smith had knelt and kissed the ring of the Pope's representative.

The most high-minded discussion of Smith's candidacy took place in the pages of the *Atlantic Monthly*. In an open letter to Smith, Charles C.

Marshall wrote that people were concerned about whether Smith's faith was "irreconcilable with that Constitution which as President you must support and defend, and with the principles of civil and religious liberty on which American institutions are based." Ironically, one concern was whether a Catholic president would result in government intolerance of other religions, government support of Catholicism, and undue influence on American politics by the Pope.

Smith replied:

> I summarize my creed as an American Catholic. I believe in the worship of God according to the faith and practice of the Roman Catholic Church. I recognize no power in the institutions of my Church to interfere with the operation of the Constitution of the United States or the enforcement of the law of the land. I believe in absolute freedom of conscience for all men and in equality of all churches, all sects, and all beliefs before the law as a matter of right and not as a matter of favor. I believe in the absolute separation of Church and State and in the strict enforcement of the provisions of the constitution that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. I believe that no tribunal of any church has any power to make any decree of any force in the law of the land, other than to establish the status of its own communicants with its own church. I believe in the support of the public schools as one of the cornerstones of American liberty. I believe in the right of every parent to choose whether his child shall be educated in the public school or in a religious school supported by those of his own faith. I believe in the principle of noninterference by this country in the internal affairs of other nations and that we should stand steadfastly against any such interference by whosoever it may be urged. And I believe in the common brotherhood of man under the common fatherhood of God. In this spirit I join with fellow Americans of all creeds in a fervent prayer that never again in this land will any public servant be challenged because of the faith in which he has tried to walk humbly with his God.

Other attacks against Smith were more sinister. Billy Sunday, the famous evangelist, claimed that as the "Ambassador of God," it was his duty to "defy the forces of hell – Al Smith and the rest of them." He ac-

cused Smith's supporters of being "damnable whisky politicians, bootleggers, crooks, pimps" and his female supporters as "streetwalkers." Some Protestant newspapers railed against Smith. One such journal in Texas warned that if Smith became president, "The Romanish system will institute persecutions again and put the cruel, blood-stained heel upon all who refuse her authority."

Like other politicians of the day, Smith carried out much of his campaign by traveling around the country by train. In a trip through the Midwest, Smith was encouraged by an enthusiastic reception in Nebraska, but the religious issue surfaced when he reached Oklahoma City. As his train approached the city, crosses burned on both sides of the tracks. The next day, Smith and his followers found that hate handbills and circulars containing libelous accusations had been distributed.

Against the advice of his campaign team, Smith decided to meet the religious issue head on. That night, facing a silent and hostile crowd, he began his speech by saying:

> I shall speak openly on the things about which people have been whispering to you...the question of my religion. Ordinarily, that word should never be used in a political campaign. The necessity for it is forced on me...and I feel that at least once in this campaign I, as the candidate of the Democratic Party, owe it to the people of this country to discuss freely and openly with them this attempt to inject bigotry, hatred, intolerance, and un-American sectarian division into a campaign which should be an intelligent debate of the important issues that confront the American people...I here and now drag them into the open and I denounce them as a treasonable attack upon the very foundation of American liberty...The absolute separation of State and Church is part of the fundamental basis of our Constitution. I believe in that separation and all that it implies. Let the people of this country decide this election upon the great and real issues of the campaign and nothing else...If the contest is fought along these lines, as I shall insist it must be, I am confident of the outcome in November.

In November, U.S. voters elected Herbert Hoover president. There is no way to know the extent to which Smith's defeat was attributable to his religion, or to lies about Smith and Catholicism.

Persisting Questions of History

Making Voting Decisions. Under what circumstances, if any, should voters consider candidates' religious affiliations before deciding how to vote. Consider the following possibilities in developing your position:

- A candidate says that she will consider religion in appointing people to offices in the government.
- A candidate is an atheist.
- A candidate is a member of a religion that has few members in the United States but many members in countries that have traditionally been unfriendly to the United States.
- A candidate refuses to discuss his religious beliefs, saying that they are not relevant to the political issues of the day.

Analyzing Constitutional Provisions. Select and defend one of the following positions:

- The Constitution protects my right to consider religion in voting for candidates for public office.
- The Constitution prohibits me from using religion as a factor in deciding who should be president.
- The Constitution is silent with respect to consideration of religion in voting for candidates.

Evaluating an Analogy. In 1988, a new president was appointed to the New York Public Library. The president, Timothy S. Healy, was a Jesuit priest, who had held offices at both Catholic and public universities. Several journalists objected to Healy's appointment, saying that the library president should be secular, or neutral toward religion. Novelist Joseph Heller went so far as to say that the library presidency was more sensitive to issues of religion than the presidency of the United States because the library president was responsible for protecting ideas.

Under what conditions do someone's religious beliefs automatically put them in opposition to the "public interest" they are to serve in a public office? Would you support a religious (or non-religious) test for the office of president of a public library system? Why or why not? If a person had to be non-religious to hold certain positions, how do you think it would affect our society? Give specific examples, if possible.

Today's Issues: Religion and Politics in the 1988 Election

By many indicators, the United States appears to be a religious nation. According to a recent Gallup Poll, about 40 percent of Americans attend church in a typical week, compared to 14 percent in Great Britain and 12 percent in France. More Americans go to church in a week than to all sporting events combined. Over 90 percent of Americans say they pray some time in the week. Internationally, Americans rank near the top in rating the importance of God in their lives. On a scale of 1 to 10, Americans averaged 8.21, second only to Malta at 9.58. Because values and beliefs inevitably affect behavior, data such as these suggest that religion will continue to be a dominant factor in American public life.

At the same time, the population of the United States is becoming more diverse, resulting in even greater diversity in religious beliefs. Coupled with this increased diversity, the 1980s saw a rise in activism among many religious groups. The essay below presents a professor of religious studies' analysis of the 1988 presidential candidacies of Jesse Jackson and Pat Robertson, two ordained ministers on opposite ends of the political spectrum. As you read, think about what you believe the role of religion in politics should be, as well as the extent to which religious tolerance is a reality in the United States.

* * * * *

Each [Robertson and Jackson] has challenged our notions about the "separation of church and state"...The neutral conjunction "and" conveys the mistaken idea that both church *and* state should be restrained from influencing the other, and that the wall of separation has padlocks on both sides of its door.

In fact, the Constitution says nothing about the *separation* of church and state, much less a wall. Rather, Article VI forbids any religious test for office, while the Bill of Rights says that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Later, this restraint was understood to limit individual states, as well as the Federal government. Thus, the Constitution prohibits influence in one direction only – from state to church....

Excerpted from "Religion and Politics: Are They Compatible?" by Bruce William Jones, in USA Today 117, no. 2518 (July 1988), pp. 44-47.

The state may not interfere in religion. The power and influence of government may not be used in support of any religious belief or institution. Public money may not pay for any church. Government is not allowed to choose between competing religious claims and must remain neutral with respect to religious values. The state may not enforce any religious doctrine, nor may it enforce any moral position *exclusively for religious reasons*.

Many laws, such as that against murder, have religious roots. Christians and Jews would point to the "Thou shalt not kill" of the Ten Commandments. However, murder is not illegal merely because it is mentioned in the Ten Commandments. Murder is illegal because a majority of citizens – of various religious opinions or none – want it to be illegal. Murder is not prohibited in order to further the aims of a particular religious group. The distinction is important.

What about the second direction – from church to state? May religion influence politics? May the church(es) try to affect the direction of the state? Our history is instructive. The Declaration of Independence says, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights." The religious assumptions underlying equality are obvious. This influence from religion to state made a valuable contribution.

It would be impossible to prevent religious influence on politics, because, ultimately, beliefs and values affect behavior, and politics is a form of human behavior...

Does it follow, then, that churches should try to influence the state? This question is more difficult to answer quickly, because the role of individuals and the role of groups in a society are not necessarily the same. We are, rightly, more suspicious of institutional meddling than of individual involvement. We are wary of a religious leader or a popular preacher telling people how to vote.

This wariness does not stem merely from the fact that the instructions come from a religious leader. We are just as suspicious when a machine-politician tells someone how to vote. Democracy depends upon the individual voters making informed choices, and our instincts oppose the surrender of individual judgment to some authority, whether or not that authority is religious.

At the same time, there is another side to this coin. In a democracy, any individual or group has the right to attempt to persuade others. We

protect the rights to free assembly and to a free press in order to facilitate that process....

All this may seem too obvious to be mentioned, but it needs to be noted when we talk about church influence on the state. It would be strange, indeed, to ask churches or clergymen to restrain themselves when we allow clubs, labor unions, families, newspaper publishers, physicians, and candlestick-makers to exert their various influences on us. It is within their rights for the followers of Pat Robertson or Jesse Jackson to try to elect people to office who share their values...

The different directions of influence are associated with two almost opposite models of the relationship between church and state. Influence from church to state is particularly compatible with a pluralistic model, which respects all traditions and allows the expression of all values. The insights of religions are placed at the service of the state. Citizens work to improve society on the basis of the moral judgments that they bring from their various religious convictions. The values of any particular religious tradition may compete with the values of any other. Decisions are made by the whole body politic on the basis of what the majority sees as the best interests of the whole.

The alternative may be called the establishment model, wherein a particular church or set of beliefs is given privileged status. Here, the resources of the state are put at the service of an established church. From Emperor Cosntantine onward, rulers used their secular power to support religious groups or enforce religious truth. Their direction of influence was from state to church, as the state was used to achieve religious goals. Frequently, public offices were limited to members of the established church...

The two models can be distinguished on the basis of several characteristics. For example, in a pluralistic model, religious values may play a legitimate role in the political process, but they always function within a secular framework. That secular framework is an affront to the establishment model.

Also, the attitude toward compromise distinguishes the two groups. Compromise is an integral element in the pluralistic model. Secular humanists and religious humanists expect to make common cause, so they can work together to create a more humane world. In an establishment of religion, one does not compromise, at least in theory. Values tend to be absolute, and compromise is betrayal of the truth....

Where does this leave us? Are the Rev. Jesse Jackson and the ex-Rev. Pat Robertson both doing the same thing, exercising their constitutionally protected right to try to influence the political process? To some extent they are, but those political analysts who lump them together are muddying the water. Each has a totally different model for resolving church-state issues.

Neither man fits the model perfectly, of course, but, in general, Jackson is a pluralist. He would like to reshape American society to reflect more of his values, and many of those values stem from his religious convictions, as they did for Martin Luther King, Jr., Christian abolitionists, and colonial clergymen who preached revolt from England.

Jackson marks himself as a pluralist by the way he and his supporters expect their values to compete with other values in a secular framework. Also, he is comfortable with compromise and has used the phrase "Rainbow Coalition" to describe the variety of his supporters...

Robertson wants to influence the political process, too, but there are some indications that he would do more if given the opportunity. He has been quoted that no atheist could serve in his administration, but more recently he has denied it... He has made it clear that God does not want abortions and that government should outlaw them. He also made it clear that public schools should encourage prayer...

The direction of influence for the two men is different. For Jackson, religious values would influence the state and make it more just, more humane – from church to state. For Robertson, the state should influence morality and restore Christian values. The direction of influence is from state to church....

It is right and proper for people of all sorts of belief to try to influence government, from church to state. In a pluralistic environment, we expect them to do so. On the other hand, influence from state to church always carries the potential for harm to both institutions. We must defend the traditional American prohibition against any religious establishment from well-meaning citizens who want to misuse the power of the state to support religious values.

Persisting Questions of Modern Life

Applying a Model to Examples. Professor Jones describes two interpretations of the proper relationship between church and state. How would you react to each of the examples below if you adopted the pluralist model? the establishment model?

- As of this writing, the Supreme Court has allowed some private choice in the matter of abortions. Polls show that a majority of Americans support this decision. However, members of various religious groups believe abortion is murder and therefore wrong. What actions would a pluralist who believes abortion is wrong take? What actions would an establishmentarian who believes abortion is wrong take?
- Organized prayer in public schools has been declared unconstitutional. Many Americans, especially evangelical Protestants, disapprove of this ruling. What actions would a pluralist who believes in prayer in schools take? What actions would an establishmentarian who believes in prayer in schools take?

Which model do you favor – the pluralist or establishment interpretation? Give reasons for your position.

Researching Political Candidates. Read some of the public statements of other candidates in the 1988 presidential election or in a more recent election. To what extent do they refer to religious values and beliefs? Do you think these candidates are appropriately applying their religious beliefs to political issues? What criteria did you use to decide on "appropriateness"?

Examining the Central Issues of This Unit. You have read about historical and contemporary events related to religious freedom in the United States. You have spent considerable time discussing issues raised in the readings. For each of the central issues of this unit, write a brief summary of how the readings and discussion have contributed to your thinking:

- What is religion? What is religious freedom?
- What is the proper relationship between religion and government?
- What limits should be placed upon the free exercise of one's religious beliefs? Can religious toleration be enforced?

Review, Reflection, and Research

Religion, the Family, and the State

Do you think the courts should be able to consider religion in making custody decisions? What might be the consequences for minority or unpopular religions? Do such cases put the government in the position of choosing one religion over another? How would you deal with this issue if confronted with the following case?

When they married, Rita and Ignacio Mendez were both Catholics, although they were not active in the church. Not long after the birth of their daughter, Rebecca, Rita became a Jehovah's Witness. Ignacio disapproved of many of her new beliefs, including refusal to salute the flag because it is a graven image and nonobservance of holidays.

When the couple decided to divorce, religion became an issue in deciding who would have custody of Rebecca. Although experts testified that Rebecca was closer to her mother than her father, they raised questions about Rita's "different" religion. One psychologist said:

> I believe that being raised a Jehovah's Witness would not be in the best interest of the child, given the fact that the principles, the way I understand them, do not fit in the western way of life in this society. Living in this society, she needs to adapt herself to the mainstream of culture....it is not a country of Jehovah's Witnesses...it is unhealthy for this child to be raised as a Jehovah's Witness.

In announcing his decision to give custody to Ignacio Mendez, the judge in the case decreed that "the wife shall not expose or permit any other person to expose the minor child to any religious practices, attendances, teachings or events which are in any way inconsistent with the Catholic religion. Nor shall the wife preclude the child from engaging in any activity which is permitted by the Catholic religion."

The decision was upheld on appeal; one judge wrote in dissent: "To be forced to choose between one's religion and one's child is repugnant to a society based on constitutional principles. The soft voice of the minority should be audible to a responsible court sensitive to constitutional rights which include the right to practice an unpopular religion."

Diversity or Unity?

Which makes a society stronger – unity of common religious belief or a wide variety of individual religious choices? Consider this dilemma as it applies to national policy toward religion.

- If our national purpose is to respect the goals of each religious group, what policies should be adopted? Should we, for example, prohibit door-to-door missionary work by religious groups? Can you give more ideas of this type?
- If our national policy is to expand freedom of religious choice, what policies should be adopted? Should we, for instance, require schools to give instruction about many religions? Give more ideas of this type.
- In what way might the policies you recommended above conflict with one another? Would these policies conflict with the right to hold *no* religious beliefs?

Limits to Free Exercise

Below are brief summaries of the beliefs and practices of three faiths. After learning more about each one through further reading, decide if you think full toleration should extend to these faiths if they begin to win substantial support in the United States.

The Sons of Freedom is a radical religious sect in the Canadian province of British Columbia. The Sons of Freedom refuse to obey all laws on the ground that they are "needed only for the wicked." To protest the periodic arrest of members, the Sons of Freedom have dropped explosive mail into post office slots, sabotaged railroad tracks and power lines, and burned down their own homes.

Soka Gakkai claims to be "True Buddhism." It was founded in 1930 and began sweeping Japan after World War II. Soka Gakkai encourages material success for its members. The highest duty of members is *shakubuku* (literally "break and subdue"), which means to convert others aggressively. Soka Gakkai advocates the marriage of church and state.

Taoism has exerted a profound influence on Chinese life and thought. Taoism calls for a retreat from civilization to the simple life in order to enable one to follow the *Tao* or "natural way to peace." Thus, Taoists forego all striving or "trying to get ahead." Taoism teaches that people should do nothing to alter the natural course of things.

To order this unit or for more information on the Public Issues Series, contact:

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RELIGIOUS FREEDOM: BELIEF, PRACTICE, AND THE PUBLIC INTEREST TEACHER'S GUIDE

Public Issues Series Social Science Education Consortium 1991

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The Public Issues Series

The *Public Issues Series* was originally conceived of by the Harvard Social Studies Project of the 1960s and 1970s. The major purpose of the series—both then and now—is to help students analyze and discuss persisting human dilemmas related to public issues. We would emphasize that the term *public issues* is not synonymous with *current events*. By public issues, we mean problems or value dilemmas persisting throughout history and across cultures. The situations of Christian martyrs in Rome, a bureaucrat in Nazi Germany, a slave in 19th-century America, or an Ethiopian refugee in Texas in 1988 all represent important public issues. We believe that most of the important current events can be clarified by reference to public issues in other places and other times. Thus, all the units in the series suggest parallels between historical illustrations of persisting human dilemmas and present issues in the United States and the world.

The units in the series use historical, fictional, and contemporary situations. They also assist students in using a structured approach to issues analysis and in developing the skills of reasoned discussion. The units are not designed to be followed mechanistically through every question. There is no critical sequence of exercises. Teachers should view the materials provided as possible strategies for developing discussion of public issues and should pick and choose among the materials according to their own goals. In making selections, teachers should note that students will need information from other sources to discuss some questions intelligently; this may be a factor in deciding whether to have students address those particular questions.

As classes work with the materials, it is important to give students a sense of progress by periodically summarizing where the case material and discussion have taken them, particularly in terms of their discussion skills and the central, or necessary, questions of the unit.

The Necessary Questions

This unit on religious freedom focuses on the following organizing questions:

- What is religion? What is religious freedom?
- What is the proper relationship between religion and government?
- What limits should be placed upon the free exercise of one's religious beliefs? Can religious toleration be enforced?

Primary source documents and secondary sources are used to acquaint students with how these questions have manifested themselves in U.S. history. The first section of the book helps students define *religion* and apply their definitions to real and hypothetical cases. The next section looks at the establishment of religion in the Massachusetts Bay Colony and early thinking about religious freedom in the colonies. The third section then turns to examination of what the First Amendment's guarantee of religious freedom has meant, looking at several key Court cases related to both separation of church and state and free exercise of religious beliefs. Finally, students consider the difference between religious freedom and religious toleration, looking at the presidential elections of 1928 and 1988 as case studies.

Analyzing the Issues

In addressing the necessary questions of this unit, students will grapple with ethical-value questions, definitional issues, and issues of fact-explanation. Legal or constitutional issues, which are numerous in this unit, tend to be a tangle of the three kinds of issues mentioned above, making sorting out these issues particularly difficult. The definitional phase in a legal or constitutional question concerns whether a particular action can be classified under an existing law or constitutional provision. For example, if the First Amendment prohibits establishing a religion, what do *establishment* and *religion* mean? The relevance of these definitional questions becomes apparent when one considers whether a case involving school textbooks that allegedly promote secular humanism falls under the First Amendment.

To answer the definitional questions, we often must answer prior questions that involve factual claims. For instance, do the textbooks mentioned above actually promote secular humanism?

Value issues are implicit in legal and constitutional issues, because the best justification for laws is that they should improve the well-being of society. Breaking the law or acting in an unconstitutional manner is therefore seen as "bad" for two reasons: first, we are violating a rule that is designed to improve our lives; second, that violation weakens the government that is presumed to be essential for maintaining order and the common good. However, we can cite many instances when laws or constitutional provisions, after greater experience and deeper reflection, were found to violate human dignity and ethical principles. That an action is legal or constitutional, therefore, does not automatically make it desirable or right.

As students work through these and other issues, they should practice the explicit stating of issues and use of analogy to clarify their positions. The teacher's role in the discussion process is that of a questioner and clarifier. Another important teacher function is summarizing the progress students have made. Students may not readily perceive the ways in which their thinking has changed during a discussion, but a teacher synopsis of the questions examined and the strategies used to support positions can reinforce students' engagement in the discussion process.

Teaching the Unit

Each Public Issues unit can be taught in a variety of ways. The following is one way to approach *Religious Freedom: Challenge to Democracy*. The responses of your students to various materials presented in the unit, as well as the demands of your curriculum, may determine the questions or issues that you choose to stress.

Preparing to Teach the Unit. Remind students of the old maxim about not discussing religion or politics in polite company. What do students believe is the basis for this directive? Point out that even highly emotional issues can be discussed productively if people keep in mind the purposes of discussion and some key ideas about discussion.

Distribute the first handout provided with the teacher's guide and read it with the class. Divide the class into groups of six to seven students; assign two students to be observers in each group. As the discussion progresses, the observers should track what appear to be the purposes of the various discussants and how well the discussants follow the guidelines provided in the handout. Allow time for the observers to report back to the groups and for the other group members to respond. For your information, the Supreme Court in this case decided in favor of the student, ruling that the Federal Equal Access Act was constitutional and that students could differentiate between government-sponsored religion and free exercise of religious beliefs.

Tell students that they are about to begin a unit on religious freedom. The unit will involve numerous discussions. They should keep the purposes of the discussions in mind—problem solving and clarification of opposing points of view—as they work to improve their ability to discuss public issues.

Introducing the Unit. Have the students read the section entitled "What Is the Public Issues Series?" on page 3. Do they agree that religious freedom is an enduring public issue? What evidence could they find to support that claim? If time allows, let them look in newspapers, magazines, textbooks, and other resources for evidence that religious freedom has been an issue throughout U.S. history and remains at issue today.

Have students finish reading the introductory section. Ask them what kind of issue or issues they were addressing when they answered the question regarding whether religious freedom is an enduring public issue. (Definitional and fact-explanation) Review with students the methods for supporting or challenging claims related to each type of issue:

Type of Issue	Strategies for Supporting/Challenging Claims
Ethical-value issues	Use of value-laden language Use of a respected source Prediction of a valued consequence Identification of a conflicting value Use of analogies
Definitional issues	Stipulation Use of a respected source
Fact-explanation issues	Reference to common knowledge Personal observation Use of a respected source Demonstration of consistency with other well-established claims

Defining Religion. This section focuses on how one defines religion. Two cases are used to help students develop and test a definition. One case is hypothetical, involving the development of a belief system by a group of boys at a summer camp. The second case involves the much-debated issue of whether secular humanism is a religion. In developing their definitions, students might find it useful to research the commonly accepted religions, such as Buddhism, Eastern Orthodoxy, Hinduism, Islam, Judaism, Protestantism, Roman Catholicism, Shinto, and Taoism. The class could be divided into cooperative learning groups to research these religions, with students looking for evidence of how many of the "criteria" provided on page 6 of the student book are met by each of the religions.

The Meaning of Religious Freedom. Contemporary Americans often do not realize that established religions are a part of American history. The first reading in this section focuses on the effects of having an established religion on the Massachusetts Bay Colony. In the "Persisting Questions" following the reading, students examine whether the fact that the Bible Commonwealth began as a private corporation affects their views on its relationship to religion. They also look at the relationship between views on the purpose of government and views on religious freedom.

You might point out that a number of liberal democratic countries currently have established religions. One example is Israel, where the clergy controls such basic issues as defining who is a Jew, as well as such rituals as marriage and divorce. Official attitudes toward and laws about divorce might be an interesting topic for research and discussion. For example, such countries as Italy and Ireland, which do not have official state religions, have more restrictive divorce laws than Sweden, which does have an official religion.

The next section presents excerpts from primary source documents that represent the developing idea of religious freedom in the colonies. You might share the following quotation from colonial historian Perry Miller regarding the origins of religious freedom: "The point is, to put it baldly, that both in education and in religion, we didn't aspire to freedom, we didn't march steadily toward it, we didn't unfold the inevitable propulsion of our hidden nature: we stumbled into it. We got a variety of sects as we got a college catalogue: the denominations and the sciences multiplied until there was nothing anybody could do about them. Wherefore we gave them permission to exist, and call the result freedom of the mind. Then we found, to our vast delight, that by thus negatively surrendering we could congratulate ourselves on a positive and heroic victory. So we stuck the feather in our cap and called it Yankee Doodle."

An interesting topic for discussion when students have read all the documents is whether Jefferson and Williams would have agreed on the meaning of religious freedom. Interested students might read more of the two men's writings on religion as background for the discussion.

In the "Persisting Questions" following this section, students develop their own definitions of *religious freedom*. They then test their definitions against a contemporary case.

It may be helpful to have students think about how life would be different today if the United States had an established religion. It may be necessary for you to suggest some dimensions along which differences might occur; these might include who is allowed to vote or run for public office, what

is taught in public schools, what forms of entertainment are permitted, what kinds of speech are protected, who holds the high-status jobs, the most common types of crime, and so on.

It may also be instructive for students to consider why Americans tolerated a closer relationship between religion (specifically, Protestantism) and government in the 19th century. For example, students could research the government's support of missionary work among Native Americans, determining how such support would be responded to today.

At the end of this section, students are asked to rate their discussion skills. The second handout provided in this guide could be used for that purpose.

The First Amendment and Religious Freedom. This section moves the question of religious freedom into the constitutional arena by first introducing students to the establishment and free exercise clauses of the First Amendment. The idea that the constitutional provisions do not end public debate about particular issues is clearly illustrated by contrasting quotations from Justices Rutledge and Douglas. The introductory reading also emphasizes the importance of definitional issues, focusing on the seemingly innocuous word *respecting*. You might ask students to consider why the authors of the First Amendment were not more explicit in defining their terms, given the various views of religious freedom that were presented in the previous section.

The introduction is followed by three court cases, any or all of which could be presented through moot court activities. The first two cases presented in this section deal with conflicts between free exercise of religious beliefs and other values, such as public education and maintenance of peace in public settings. It may be useful to have students explicitly identify the values in conflict before they discuss the questions regarding these cases.

After students have read and discussed both of these cases, you might ask them to develop a set of guidelines for determining when the free exercise of religion can be limited. These guidelines would likely include some listing of rights that students believe should take precedence over freedom of religion. This exercise could lead to a discussion of whether rights can be prioritized or not.

The third case in this section is the Murray school prayer case of the 1960s, which was primarily an establishment of religion issue. Students may be interested to know that five justices wrote opinions on the Murray and Abington cases, indicating that decisions related to these issues are difficult. The case is followed by a listing of other kinds of school/religion relationships for which students are asked to decide whether the relationship is a violation of the First Amendment or not. The cases do not deal with financial aid to parochial schools, a subject that is particularly germane because of the current interest in a school voucher plan.

The final reading in this section deals with the teaching of evolution and "scientific creationism." While discussing this reading, students may find it necessary to define *science*, as well as religion. It might be useful to have a scientist visit the class to discuss how scientists evaluate their ideas. Does "scientific creationism" fit the criteria established for a scientific explanation?

Freedom of Religion vs. Religious Toleration. This section deals with the question of whether constitutionally mandated freedom of religion guarantees religious toleration, using the presidential candidacy of Al Smith as a case study in intolerance. The prejudice against Catholics had complex causes. In the 1920s, many Catholic Americans were still regarded as "newcomers," having arrived in the wave of immigration that began in the late 1800s. This wave of immigration was connected with the burgeoning of urban life in the United States, where there was tremendous bias in favor of a rural lifestyle. In addition, many Catholics lived in urban villages, close to church and parochial school life. This made mainstream Protestants paranoid about the "conspiratorial" nature of Catholicism. In addition, Catholics were subject to class prejudices, since many poor and working class people were Catholics. This complicated interweaving of fears and prejudices would likely provoke lively discussion among students, particularly if they were asked to analyze current religious and racial prejudices to see whether they involve similar etiologies.

As a contemporary analogy, students look at the campaign of 1988, in which two of the candidates for the presidential nomination were ministers. An analysis of the differences between those two candidates—Jesse Jackson and Pat Robertson—is presented; the analysis focuses on whether the candidate supported religious influence on government (termed pluralistic) or advocated government support of religion (termed establishmentarian). Students are asked to apply the model used in the analysis to other candidates in either the 1988 election or a subsequent election. They might also look at how the religious backgrounds of nominees to the Supreme Court have been treated.

In the "Persisting Questions," students are asked how an establishmentarian and pluralist would respond to the abortion and school prayer issues.

The following analysis was provided by Bruce William Jones, the author of the reading:

> Under the pluralistic model, you would work to alter public opinion. It would be your long-range goal to change enough minds that elected representatives would bring the laws closer to your values. Meanwhile, you would try to persuade individuals not to have abortions. As further encouragement, you might even provide financial support for unwed mothers or adoption services.
>
> Under the establishment model, the will of the majority is not really relevant. You know the will of God, and you should enforce it if you have the power to do so. Error has no rights.
>
> Prayer in the public school is another example for differentiating the two types of church-state relationships. When the direction of influence is from church to state, you could pray anywhere you wanted, including in a classroom, if you so desired. Prayer is a private activity, so no one should stop you as long as you were not disturbing others. In fact, others probably would not even know you were doing it. When the direction of influence is from state to church, prayer belongs in the classroom. When it is missing, the state is failing its responsibility, because it is the state's job to encourage the practice of religion.

Review, Reflection, and Research. These exercises include writing, research, and discussion. You may assign them selectively for completion by individual students or small groups, or they can be used as topics for large-group discussion and reflection on the unit. They can also be used for evaluation purposes. Another possible evaluation activity is having students write about how well they think they did in thinking about both the issue at hand and the way in which they were discussing it.

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Student Name_____

Purposes and Skills of Discussion

Why do people become involved in discussions and arguments? There are several reasons: a person's desire to bring someone else around to his/her point of view; someone's urge to "get something off his/her chest"; a person's desire to resolve a problem; a person's hope of clarifying or better understanding differing opinions; or someone's desire simply to engage in verbal combat and score a victory.

Persuasion and "Winning." Sometimes people get into discussions because they want to persuade other people that their point of view is correct. Once such a person has persuaded someone else to accept the truth of his/her ideas, that person feels a little more certain his/her beliefs are valid. The element of persuasion is involved in almost all arguments. But persuasion serves a useful purpose only if participants are open-minded enough to be persuaded as well as to do the persuading. People in a discussion have to entertain seriously the possibility of being wrong, as well as wanting to prove that they themselves are right.

A discussant who is mainly concerned with "winning" is likely to stress only those points that favor his/her position. This person is likely to steer clear of points that challenge or damage that position. Thus, discussions may go around in circles, rehashing the same points over and over again.

Unloading Feelings. A second reason people engage in conversation is simply to express their feelings. In this sort of situation, the people doing most of the talking simply want a sympathetic audience. This kind of "unloading" may make a person feel better, but rarely leads to mutual clarification or persuasion.

Problem Solving and Clarification of Opposing Points of View. A third reason that people discuss controversial topics is to obtain help in resolving a perplexing or difficult problem by exchanging views on the question. Instead of bringing preconceived solutions to the discussion, participants look upon this type of conversation as an aid to developing beliefs or figuring out what their beliefs actually are. This approach must involve the possibility that at the end of a conversation no acceptable "solution" will have emerged – that sharp differences of opinion may remain. Nevertheless, the discussion has been useful if it brings increased clarity about the complexity of the problem and mutual awareness of differences in opinion. It is often just as useful for people to know why they disagree as it is for them to know why they agree.

Most discussions or conversations combine several of these ingredients or move from one phase to another. This unit is intended to aim conversations at persuasion, problem solving, and clarification when discussants take a stand on public issues. Here are some tips that may help you aim your conversations toward these goals:

- Within a group involved in a discussion, try to agree on what issue or issues you are disagreeing about and what discussion goal will be most important. Set an agenda for discussing those issues. An agenda is a list of issues to be considered.
- Before moving to another issue, summarize the differences among the discussants on the previous issue. Even when discussing only one issue, periodic summaries can be helpful.
- When the group moves to another issue, make sure everyone is clear that the issue has changed.
- Periodically check to see which of the more general goals of discussion are most important.
- When there are factual issues that cannot be resolved without more information, try to stipulate a resolution. That is, get the group to agree on a claim, even though it is controversial, so they can explore the implications.
- Be willing to change your position. Remember, "winning" is not the purpose of this discussion.
- Listen actively to other participants in the discussion and don't monopolize the conversation.

Assignment:

Try to keep the information above in mind as you discuss the current religious freedom issue described below. When your group has finished its conversation, write a sentence or two explaining your view on the issue. Then write a sentence or two explaining the views of one other member of your group.

Several high school students in Omaha wanted to form an after-school Bible club. Their request was denied by the school principal, who said that while he thought the club was a good idea, it could not meet at the school. Because the public schools are supported by taxes, they are governmental entities. Thus, holding a Bible-discussion group at school would violate the First Amendment, which requires separation of church and government.

One of the students, Bridget Mertgens, decided to sue. She based her case on the Federal Equal Access Act, which says that if a school has any clubs not related to the formal curriculum (the courses taught), it could not ban other groups from meeting on the basis of "religious, political, philosophical, or other content of the speech at such meetings." Since the school did have clubs not related to the curriculum, Bridget said that preventing the Bible club from meeting violated her right to free exercise of her religion.

The school responded to Bridget's argument by saying that their other clubs, including the scuba and chess clubs and athletic teams, were related to the broad goals of the school.

How would you decide on this case?

Student Name_____

Discussion Rating Scales

Setting an Agenda

1	2	3	4	5
poor	fair	satisfactory	very good	excellent

Summarizing Progress

1	2	3	4	5
poor	fair	satisfactory	very good	excellent

Making Clear Transitions

1	2	3	4	5
poor	fair	satisfactory	very good	excellent

Stipulating a Resolution to Disputed Factual Claims

1	2	3	4	5
poor	fair	satisfactory	very good	excellent

Being Open to New Ideas

1	2	3	4	5
poor	fair	satisfactory	very good	excellent

Listening Actively

1	2	3	4	5
poor	fair	satisfactory	very good	excellent

Overall

1	2	3	4	5
poor	fair	satisfactory	very good	excellent